

23-4125

United States Court of Appeals
for the
Fourth Circuit

UNITED STATES OF AMERICA,

Plaintiff/Appellee,

– v. –

DALLAS MICHAEL ACOFF, a/k/a DAL.,

Defendant/Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA AT WHEELING

JOINT APPENDIX
VOLUME ONE (PAGES 1-95)

SHAWN M. ADKINS
OFFICE OF THE U.S. ATTORNEY
P.O. Box 591
Wheeling, West Virginia 26003
(304) 234-1000
shawn.adkins@usdoj.gov

ROBERT G. MCCOID
MCCOID LAW OFFICES, PLLC
56-58 14th Street
Wheeling, West Virginia 26003
(304) 242-2000
robert@mccoidlaw.com

Counsel for Appellee

Counsel for Appellant



COUNSEL PRESS • VA – (804) 648-3664

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APPEAL

**U.S. District Court
Northern District of West Virginia (Wheeling)
CRIMINAL DOCKET FOR CASE #: 5:22-cr-00013-JPB-JPM-1**

Case title: USA v. Acoff

Date Filed: 04/05/2022

Date Terminated: 02/17/2023

Assigned to: District Judge John Preston Bailey
Referred to: Magistrate Judge James P. Mazzone
Appeals court case number: 23-4125 USCA Fourth
Circuit

Defendant (1)

Dallas Michael Acoff

TERMINATED: 02/17/2023

also known as

"DAL"

TERMINATED: 02/17/2023

represented by **Charles T. Berry**

Charles T. Berry Esquire

P.O. Box 114

Kingmont, WV 26578

304-363-3564

Fax: 304-816-3117

Email: cberrylaw@hotmail.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Designation: CJA Appointment

Brendan S. Leary

Federal Public Defender Office - Whg.

U.S. Courthouse

1125 Chapline St., Rm. 208

Wheeling, WV 26003

(304) 233-1217

Fax: (304) 233-1242

Email: brendan_leary@fd.org

TERMINATED: 07/28/2022

*Designation: Public Defender or Community
Defender Appointment*

Pending Counts

DISTRIBUTE IN OR NEAR
SCHOOLS/CONTROLLED SUBSTANCE
(1)

CONTROLLED SUBSTANCE - SELL,
DISTRIBUTE, OR DISPENSE
(2-5)

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Defendant to be incarcerated for a term of 240
months to run concurrent; Supervised Release 6
years to run concurrent; Special Assessment \$100;
Fine N/A; Restitution N/A

Defendant to be incarcerated for a term of 240
months to run concurrent; Supervised Release 3
years to run concurrent; Special Assessment \$100
per count; Fine N/A; Restitution N/A

Disposition

Highest Offense Level (Terminated)

None

Complaints

None

Disposition**Plaintiff**

USA

represented by **Shawn Michael Adkins**

U.S. Attorney's Office - Wheeling

PO Box 591

1125 Chapline Street, Ste. 3000

Wheeling, WV 26003

(304) 234-0100

Fax: (304) 234-0111

Email: shawn.adkins@usdoj.gov

LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Designation: United States Attorney*

Date Filed	#	Docket Text
04/05/2022	1	INDICTMENT with Forfeiture Allegation as to Dallas Michael Acoff counts 1, 2-5. (nmm) (Main Document 1 replaced on 4/26/2022 to attach complete Indictment to include Count 2) (nmm). Modified on 4/26/2022: NEF Regenerated (nmm). (Entered: 04/05/2022)
04/05/2022	2	*SEALED* Indictment - Unredacted, re 1 Indictment as to Dallas Michael Acoff. (Attachments: # 1 Grand Jury Docket Sheet) (nmm) (Entered: 04/05/2022)
04/20/2022	4	MOTION for Writ of Habeas Corpus ad prosequendum by USA as to Dallas Michael Acoff. (Attachments: # 1 Proposed Order, # 2 Attachment Writ of Prosequendum)(Adkins, Shawn) (Entered: 04/20/2022)
04/21/2022	5	ORDER: granting 4 Motion for Writ of Habeas Corpus ad prosequendum as to Dallas Michael Acoff. Signed by Magistrate Judge James P. Mazzone on 4/21/2022. (nmm) (Entered: 04/21/2022)
04/21/2022	6	Writ of Habeas Corpus ad Prosequendum Issued as to Dallas Michael Acoff for 4/26/2022 at 10:00a.m. (original and copy w/order to cbg usm; copy to usm via email) (nmm) (Entered: 04/21/2022)
04/21/2022	7	PAPERLESS ORDER as to Dallas Michael Acoff. An Initial Appearance and Arraignment are set for 4/26/2022 at 10:00 AM in the Wheeling Magistrate Judge Courtroom, 4th Floor before Magistrate Judge James P. Mazzone. Signed by Magistrate Judge James P. Mazzone on 4/21/22. (jc) Modified on 4/25/2022: NEF Regenerated to Atty. Leary only (nmm). (Entered: 04/21/2022)
04/22/2022	8	MOTION for Detention by USA as to Dallas Michael Acoff. (Adkins, Shawn) (Entered: 04/22/2022)
04/25/2022	9	** SEALED ** CJA 23 Financial Affidavit by Dallas Michael Acoff (copy to fpd via email) (nmm) (Entered: 04/25/2022)
04/25/2022	10	ORDER APPOINTING FEDERAL PUBLIC DEFENDER as to Dallas Michael Acoff: Brendan S. Leary appointed. Signed by Magistrate Judge James P. Mazzone on 4/25/2022. (copy to defendant via us mail; copy to L. Coleman-fpd and usm via email) (nmm) (Entered: 04/25/2022)
04/26/2022	11	MINUTE ENTRY: <u>***NOTICE*** THE ATTACHED DOCUMENT IS NOT ACCESSIBLE. IT IS FOR STATISTICAL PURPOSES ONLY.</u> Proceedings held before Magistrate Judge James P. Mazzone as to Dallas Michael Acoff: Initial Appearance/Arraignment as to Counts 1,2-5 held on 4/26/2022. (Tape #WHG Mazzone 5 22 cr 13 USA v Acoff 4 26 2022.) (nmm) (Entered: 04/26/2022)
04/26/2022	12	DUE PROCESS PROTECTIONS ACT ORDER TO ALL COUNSEL REGARDING BRADY OBLIGATIONS as to Dallas Michael Acoff. Signed by Magistrate Judge James P. Mazzone on 4/26/2022.

		(nmm) (Entered: 04/26/2022)
04/26/2022	13	ORDER OF TEMPORARY DETENTION PENDING HEARING PURSUANT TO BAIL REFORM ACT as to Dallas Michael Acoff. Signed by Magistrate Judge James P. Mazzone on 4/26/2022. (copy to usm via email) (nmm) (Entered: 04/26/2022)
04/26/2022	14	INITIAL SCHEDULING ORDER as to Dallas Michael Acoff <i>***NOTICE TO ATTORNEYS*** : Pursuant to Rule 12.4(a)(1) of the Federal Rules of Criminal Procedure, ALL Non-governmental CORPORATE PARTIES must file a DISCLOSURE STATEMENT with the Court. Additionally, per Rule 12.4(a)(2) of the Federal Rules of Criminal Procedure, the GOVERNMENT must file a statement identifying all organizational victims. Forms are available on the Court's Web Site at http://www.wvnd.uscourts.gov/forms.htm</i> Discovery due by 4/29/2022; Motions due by 5/11/2022; Responses due by 5/18/2022; Motion Hearing set for 5/19/2022 11:00 AM in Wheeling Magistrate Judge Courtroom, 4th Floor before Magistrate Judge James P. Mazzone; Plea Agreement due by 5/31/2022; Pretrial Conference set for 6/1/2022 04:30 PM in Wheeling District Judge Courtroom, North before District Judge John Preston Bailey; Jury Selection/Jury Trial set for 6/7/2022 09:00 AM in Wheeling District Judge Courtroom, North before District Judge John Preston Bailey. Signed by Magistrate Judge James P. Mazzone on 4/26/2022. (copy to usm via email) (nmm) (Entered: 04/26/2022)
04/26/2022	15	DETENTION ORDER as to Dallas Michael Acoff: the issue of detention is CONTINUED GENERALLY. Signed by Magistrate Judge James P. Mazzone on 4/26/2022. (copy to usm via email) (nmm) (Entered: 04/26/2022)
04/26/2022		Arrest of Dallas Michael Acoff (nmm) (Entered: 04/27/2022)
05/12/2022	17	PAPERLESS ORDER as to Dallas Michael Acoff. For reasons appearing to the Court, the Motion Hearing set for 5/19/22 has been CANCELLED, as no motions have been filed. Signed by Magistrate Judge James P. Mazzone on 5/12/22. (jc) (Entered: 05/12/2022)
05/20/2022	18	MOTION to Continue <i>Trial Date</i> by Dallas Michael Acoff. (Leary, Brendan) (Entered: 05/20/2022)
05/23/2022	19	ORDER GRANTING 18 UNOPPOSED MOTION TO CONTINUE TRIAL DATE as to Dallas Michael Acoff: the trial will now commence on August 16, 2022, at 9:00 a.m.; the pretrial conference is hereby CONTINUED until August 10, 2022, at 3:30 p.m. Signed by District Judge John Preston Bailey on 5/23/2022. (copy to usm and usm via email) (nmm) (Entered: 05/23/2022)
07/14/2022	20	MOTION for Release from Custody <i>for Furlough</i> by Dallas Michael Acoff. (Attachments: # 1 Letter)(Leary, Brendan) (Entered: 07/14/2022)
07/15/2022	21	ORDER DENYING 20 MOTION FOR RELEASE ON FURLOUGH as to Dallas Michael Acoff. Signed by District Judge John Preston Bailey on 7/15/2022. (nmm) (Entered: 07/15/2022)
07/27/2022	22	MOTION to Withdraw as Attorney by Brendan S. Leary. by Dallas Michael Acoff. (Leary, Brendan) (Entered: 07/27/2022)
07/28/2022	23	GRANTING MOTION TO WITHDRAW AS COUNSEL 22 . Attorney Brendan S. Leary terminated in case as to Dallas Michael Acoff. Signed by District Judge John Preston Bailey on 7/28/2022. (ag)(L. Coleman by email) (Entered: 07/28/2022)
08/01/2022	24	ORDER APPOINTING CJA PANEL ATTORNEY AS COUNSEL: Attorney Charles T. Berry appointed for Dallas Michael Acoff. Signed by Magistrate Judge James P. Mazzone on 7/29/2022 (Nunc Pro Tunc). (copy to defendant via us mail; copy to L. Coleman-fpd and usm via email) (nmm) (Entered: 08/01/2022)
08/02/2022	25	MOTION to Continue <i>Pretrial Hearing and Trial</i> by Dallas Michael Acoff. (Berry, Charles) (Entered: 08/02/2022)
08/02/2022	26	ORDER granting 25 MOTION to Continue Pretrial Hearing and Trial as to Dallas Michael Acoff (1). The parties shall submit to this Court potential new dates for the pretrial and trial on or before August 12, 2022. Signed by District Judge John Preston Bailey on 08/02/2022. (cwm) Copy to USMS and USPO. (Entered: 08/02/2022)
08/09/2022	27	Other Document <i>Submission of Potential Trial Dates</i> filed by Dallas Michael Acoff (Berry, Charles) (Entered: 08/09/2022)
08/09/2022	28	Pro Se MOTION to Withdraw Appointed Counsel (Brendan S. Leary), by Dallas Michael Acoff. (nmm) (Entered: 08/09/2022)

08/10/2022	29	ORDER: denying as moot 28 pro se Motion to Withdraw as Attorney as to Dallas Michael Acoff (1). Signed by District Judge John Preston Bailey on 8/10/2022. (ag)(DEF US Mail) (Entered: 08/10/2022)
08/15/2022	30	ORDER as to Dallas Michael Acoff: the trial will now commence on November 8, 2022, at 9:00 a.m.; the pretrial conference will commence on October 31, 2022, at 2:00 p.m. Signed by District Judge John Preston Bailey on 8/15/2022. (copy to usp and usm via email) (nmm) (Entered: 08/15/2022)
08/16/2022	31	MAIL RETURNED AS UNDELIVERABLE: 24 CJA 20 - Appointment, addressed to Dallas Michael Acoff Returned As Undeliverable. Return to Sender; not deliverable as addressed; unable to forward. (ag) (Entered: 08/16/2022)
10/10/2022	32	NOTICE <i>Intent to Plead Guilty</i> by Dallas Michael Acoff (Berry, Charles) (Entered: 10/10/2022)
10/13/2022	33	PAPERLESS ORDER as to Dallas Michael Acoff. A Plea Hearing is set for 10/19/2022 at 11:00 AM in the Wheeling Magistrate Judge Courtroom, 4th Floor before Magistrate Judge James P. Mazzone. Signed by Magistrate Judge James P. Mazzone on 10/13/22. (jc) (Entered: 10/13/2022)
10/13/2022	34	AMENDED PAPERLESS ORDER as to Dallas Michael Acoff. The Plea Hearing previously set for 10/19/22 HAS BEEN RESET for 10/18/2022 at 11:00 AM in Wheeling Magistrate Judge Courtroom, 4th Floor before Magistrate Judge James P. Mazzone. Signed by Magistrate Judge James P. Mazzone on 10/13/22. (jc) (Entered: 10/13/2022)
10/18/2022	35	MINUTE ENTRY: <u>***NOTICE*** THE ATTACHED DOCUMENT IS NOT ACCESSIBLE. IT IS FOR STATISTICAL PURPOSES ONLY.</u> Proceedings held before Magistrate Judge James P. Mazzone as to Dallas Michael Acoff: Change of Plea Hearing held on 10/18/2022. Plea entered by Dallas Michael Acoff (1) Guilty Counts 1-5. (Tape #WHG Mazzone 5 22 cr 13 USA v Acoff 10 18 2022.) (nmm) (Entered: 10/18/2022)
10/18/2022	36	WAIVER OF ARTICLE III JUDGE AND CONSENT TO ENTER GUILTY PLEA BEFORE THE US MAGISTRATE JUDGE by Dallas Michael Acoff (nmm) (Entered: 10/18/2022)
10/18/2022	37	CHANGE OF PLEA ORDER as to Dallas Michael Acoff: Defendant then entered a plea of GUILTY to Counts One, Two, Three, Four, and Five of the original Indictment. Signed by Magistrate Judge James P. Mazzone on 10/18/2022. (nmm) (Entered: 10/18/2022)
02/13/2023	39	MOTION for Extension of Time to File <i>Sentencing Memorandum</i> by Dallas Michael Acoff. (Berry, Charles) (Entered: 02/13/2023)
02/13/2023	40	SENTENCING MEMORANDUM (Berry, Charles) (Entered: 02/13/2023)
02/14/2023	41	ORDER: this Court will GRANT 39 defendant's Motion to File Out of Time as to Dallas Michael Acoff. This Court notes that defendant's sentencing memorandum was filed on February 13, 2023. See 40 . Signed by District Judge John Preston Bailey on 2/14/2023. (nmm) (Entered: 02/14/2023)
02/15/2023	42	PAPERLESS ORDER as to Dallas Michael Acoff: A Sentencing Hearing is now set for THURSDAY, FEBRUARY 16, 2023, at 1:30 PM in Wheeling District Judge Courtroom, North, before District Judge John Preston Bailey. Signed by District Judge John Preston Bailey on 2/15/2023. Copies to USMS and USP. (bjt) (Entered: 02/15/2023)
02/16/2023	43	MINUTE ENTRY: <u>***NOTICE*** THE ATTACHED DOCUMENT IS NOT ACCESSIBLE. IT IS FOR STATISTICAL PURPOSES ONLY.</u> A Sentencing Hearing was held before District Judge John Preston Bailey as to Dallas Michael Acoff (1) on 2/16/2023. Counts 1 - 5, Defendant to be incarcerated for a term of 240 months to run concurrent; Supervised Release Count 1, 6 years and Counts 2-5, 3 years, to run concurrent; Special Assessment \$100 on each count for a total of \$500.00; Fine N/A; Restitution N/A(Court Reporter Cindy Knecht.) (bjt) (Entered: 02/17/2023)
02/16/2023	46	PRESENTENCE INVESTIGATION REPORT (Sealed) as to Dallas Michael Acoff (bjt) (Entered: 02/17/2023)
02/17/2023	44	JUDGMENT as to Dallas Michael Acoff: Count 1, Defendant to be incarcerated for a term of 240 months to run concurrent; Supervised Release 6 years to run concurrent; Special Assessment \$100; Fine N/A; Restitution N/A; Counts 2-5, Defendant to be incarcerated for a term of 240 months to run concurrent; Supervised Release 3 years to run concurrent; Special Assessment \$100 per each count; Fine N/A; Restitution N/A. Signed by District Judge John Preston Bailey on 2/17/2023. (nmm) (Entered: 02/17/2023)

02/17/2023	45	*SEALED* STATEMENT OF REASONS as to Dallas Michael Acoff. Signed by District Judge John Preston Bailey on 2/17/2023. (copy to counsel via email) (nmm) (Entered: 02/17/2023)
02/17/2023	47	Writ of Habeas Corpus ad Prosequendum Returned Executed as to Dallas Michael Acoff on 2/16/2023. (nmm) (Entered: 02/17/2023)
03/01/2023	48	NOTICE OF APPEAL by Dallas Michael Acoff re 44 Judgment,, (Berry, Charles) (Entered: 03/01/2023)
03/01/2023	49	Transmission of Notice of Appeal and Docket Sheet as to Dallas Michael Acoff to US Court of Appeals re 48 Notice of Appeal - Final Judgment (nmm) (Entered: 03/01/2023)
03/02/2023	50	USCA NOTICE OF APPELLATE CASE OPENING: as to Dallas Michael Acoff for 48 Notice of Appeal - Final Judgment filed by Dallas Michael Acoff. Case Number: 23-4125 Case Manager: Emily Borneisen (804-916-2704). (nmm) (Entered: 03/02/2023)
03/02/2023	51	ORDER of USCA appointing Charles T. Berry as counsel for Dallas Michael Acoff re 48 Notice of Appeal - Final Judgment (nmm) (Entered: 03/02/2023)

PACER Service Center			
Transaction Receipt			
03/04/2023 13:59:34			
PACER Login:	ctrberry	Client Code:	
Description:	Docket Report	Search Criteria:	5:22-cr-00013-JPB-JPM
Billable Pages:	6	Cost:	0.60
Exempt flag:	Not Exempt	Exempt reason:	Not Exempt

FILED

APR 5 2022

U.S. DISTRICT COURT-WVND
WHEELING, WV 26003

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

v.

DALLAS MICHAEL ACOFF, AKA "DAL,"

Defendant.

Criminal No. 5:22-cr-13

Violations: 21 U.S.C. § 841(a)(1)
21 U.S.C. § 841(b)(1)(C)
21 U.S.C. § 860

INDICTMENT

The Grand Jury charges that:

COUNT ONE

(Distribution of Cocaine Base within 1000 Feet of a Protected Location)

On or about August 5, 2021, in Ohio County, in the Northern District of West Virginia, defendant, **DALLAS MICHAEL ACOFF, AKA "DAL,"** did unlawfully, knowingly, intentionally, and without authority, distribute a mixture and substance containing a detectable amount of cocaine base, also known as "crack," a Schedule II controlled substance, in exchange for a sum of United States currency within 1000 feet of real property comprising the Fulton Playground; in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(C), and 860.

COUNT TWO

(Possession with Intent to Distribute Cocaine Base)

On or about February 2, 2022, in Ohio County, in the Northern District of West Virginia, defendant **DALLAS MICHAEL ACOFF, AKA “DAL,”** did unlawfully, knowingly, intentionally, and without authority, possess with the intent to distribute a mixture and substance containing a detectable amount of cocaine base, also known as “crack,” a Schedule II controlled substance; in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT THREE

(Possession with Intent to Distribute Cocaine)

On or about February 2, 2022, in Ohio County, in the Northern District of West Virginia, defendant **DALLAS MICHAEL ACOFF, AKA “DAL,”** did unlawfully, knowingly, intentionally, and without authority, possess with the intent to distribute a mixture and substance containing a detectable amount of cocaine, also known as “coke,” a Schedule II controlled substance; in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT FOUR

(Possession with Intent to Distribute Methamphetamine)

On or about February 2, 2022, in Ohio County, in the Northern District of West Virginia, defendant **DALLAS MICHAEL ACOFF, AKA “DAL,”** did unlawfully, knowingly, intentionally, and without authority, possess with the intent to distribute a mixture and substance containing a detectable amount of methamphetamine, a Schedule II controlled substance; in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT FIVE

(Possession with Intent to Distribute Fentanyl)

On or about February 2, 2022, in Ohio County, in the Northern District of West Virginia, defendant **DALLAS MICHAEL ACOFF, AKA “DAL,”** did unlawfully, knowingly, intentionally, and without authority, possess with the intent to distribute a mixture and substance containing a detectable amount of fentanyl, a Schedule II controlled substance; in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

FORFEITURE ALLEGATION

Controlled Substance Act

Pursuant to Title 21, United States Code, Section 853, and Title 21, United States Code, Section 841, the government will seek the forfeiture of property as part of the sentence imposed in this case; that is, the forfeiture of any property used, or intended to be used, to commit or to facilitate the commission of the above referenced offense, and any property constituting, or derived from, proceeds obtained directly or indirectly, as a result of such offense.

A True Bill,

/s/
Grand Jury Foreperson

/s/
WILLIAM IHLENFELD
United States Attorney

Shawn M. Adkins
Assistant United States Attorney

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF WEST VIRGINIA
3 United States of America,
4 Plaintiff,
5 VS. CRIMINAL ACTION NO.
6 5:22-cr-13
7 Dallas Acoff,
8 Defendant.
9 - - -
10 Proceedings had in the plea hearing of the above-styled
11 action on October 18, 2022, before Honorable James P. Mazzone,
12 Magistrate Judge, at Wheeling, West Virginia.

13 - - -

14 APPEARANCES:

15 On behalf of the United States of America:

16 Jennifer T. Conklin
17 Assistant United States Attorney
18 United States Attorney's Office
19 P.O. Box 591
20 Wheeling, WV 26003
21 304.234.0100

22 On behalf of the Defendant:

23 Charles T. Berry
24 PO Box 114
25 Kingmont, WV 26578
304.363.3564

26 The defendant was present in person.

27 Proceedings recorded utilizing realtime translation.
28 Transcript produced by computer-aided transcription.

Cindy L. Knecht, RMR/CRR/CBC/CCP
PO Box 326 Wheeling, WV 26003 304.234.3968

Tuesday Morning Session,
October 18, 2022, 11:00 a.m.

- - -

THE CLERK: This is the case of the United States of
America versus Dallas Michael Acoff, Criminal Action Number
5:22-CR-13.

Will counsel please note their appearance for the
record.

MS. CONKLIN: Jennifer Conklin standing in for Shawn
Adkins.

MR. BERRY: Charles Berry for Mr. Acoff, Judge.

THE COURT: Okay. Good morning.

Mr. Berry, it's the Court's understanding that
Mr. Acoff desires to enter a plea of guilty to the charges
contained in Count 1, 2, 3, 4, and 5 of the original
indictment, including the forfeiture allegation; is that
correct?

MR. BERRY: That was my understanding, too, Judge,
until this morning, and I have been advised by Mr. Acoff that
he does not want to plead.

THE COURT: Okay. To anything?

MR. BERRY: Doesn't want to plead to anything.

THE COURT: Okay. Well, then I'll alert the District
Court of that decision and the matter will proceed. Is there
anything else that we need to take up at this time?

1 MR. BERRY: I don't think so, Judge.

2 THE DEFENDANT: There is.

3 (Discussion off the record.)

4 MR. BERRY: Judge, he now thinks he wants to do it.

5 THE COURT: Okay. Counts 1 through 5, without a plea
6 agreement?

7 MR. BERRY: That's true, yes.

8 THE COURT: Okay. We are back on the record. And
9 again, just to confirm, there is no plea agreement in this
10 case, correct?

11 MR. BERRY: There is none. Actually, Judge, there's
12 been a lot of conversations with the government regarding the
13 plea agreement, and the government is unwilling to take out the
14 requirement that he debrief. He doesn't want to debrief, so
15 we've worked out where it's -- it's actually the same plea
16 agreement, except there's no agreement. The government has
17 agreed to allow him to argue or allow us to argue at sentencing
18 for a lot of drugs that were on -- over on the island. And
19 that was a big concern, big concern for Mr. Acoff, and it's a
20 concern for me.

21 So even doing what we're doing, he's still going to
22 be able to do that without losing his acceptance. That's the
23 agreement with the government. So I don't know what else to
24 say. It's a good agreement.

25 THE COURT: Mr. Acoff, sir, would you please stand

1 and raise your right hand so that you may be sworn in.

2 (Defendant sworn.)

3 THE COURT: Mr. Acoff, sir, do you understand that
4 you are now under oath, and that if you were to answer any of
5 these questions today falsely, your answers may later be used
6 against you in another prosecution for perjury or for making a
7 false statement?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you understand that if you were to
10 lie, it could result in a higher sentence for you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Acoff, during the course of this
13 hearing, I will be asking you several questions. At any point
14 you should feel free to ask questions, ask for an explanation
15 if you do not understand any of my questions, or ask for me to
16 pause the proceedings so that you may confer with Mr. Berry
17 prior to answering any of the questions.

18 Do you understand that, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Would you please state your full name.

21 THE DEFENDANT: Dallas Michael Acoff.

22 THE COURT: How old are you?

23 THE DEFENDANT: 33.

24 THE COURT: How far have you gone in school?

25 THE DEFENDANT: I got my GED.

1 THE COURT: Can you read, write, and understand the
2 English language?

3 THE DEFENDANT: For the most part.

4 THE COURT: Have you recently been under the care of
5 a doctor, a psychiatrist, or any other medical professional for
6 any serious physical or mental illness, including addiction to
7 drugs or alcohol?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, Mr. Acoff, let me inquire, do any of
10 those medical conditions or medication that you may be on
11 affect your ability to hear, communicate, or comprehend?

12 THE DEFENDANT: No, sir.

13 THE COURT: Are you currently using any form of
14 controlled substance or any medication or alcohol that may
15 affect your ability to understand this proceeding?

16 THE DEFENDANT: No, sir.

17 THE COURT: Mr. Berry, do you have any reason to
18 question the competence of Mr. Acoff?

19 MR. BERRY: I do not, Judge.

20 THE COURT: Mr. Acoff, are you here today to enter
21 these guilty pleas?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Acoff, the Court would then make a
24 finding that you are competent and capable of entering an
25 informed plea.

1 Mr. Acoff, I'm a United States Magistrate Judge. You
2 are charged in this case with a felony. That means that you do
3 have the right to have this plea taken by an Article III Judge,
4 sometimes called a District Judge. Only you can give up that
5 right, and I can only hear your plea if you agree to it by
6 signing a written waiver.

7 In that regard, the record should reflect the Court
8 is tendering that waiver to Mr. Berry. If you could please
9 approach to Mr. Berry at this time for his review with
10 Mr. Acoff.

11 MR. BERRY: May I approach, Your Honor?

12 THE COURT: Yes, please.

13 The record should reflect that the Court has now been
14 provided with a fully executed waiver of Article III Judge.

15 Mr. Acoff, you executed this waiver form in open
16 court. Did you read it prior to executing it?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Did you understand it?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did you feel as if you were forced or
21 compelled to sign this form against your will?

22 THE DEFENDANT: No, sir.

23 THE COURT: Mr. Berry, is it also your understanding
24 that Mr. Acoff agrees to this waiver?

25 MR. BERRY: Yes, sir.

1 THE COURT: The Court will make a finding that the
2 waiver form has been properly executed. It will be tendered to
3 the clerk for entry.

4 Mr. Acoff, do you understand that you do have a right
5 to be represented by an attorney at every stage of these
6 proceedings, including sentencing, and that if you could not
7 afford an attorney, you would have the right to have one
8 appointed?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Berry, do you or any member of your
11 office represent anyone, including any codefendants, who may be
12 interested in the outcome of this case?

13 MR. BERRY: No, Your Honor. And this is a
14 single-defendant case.

15 THE COURT: Mr. Acoff, sir, do you believe that
16 you've had an adequate amount of time to discuss your case
17 fully with Mr. Berry?

18 THE DEFENDANT: No.

19 THE COURT: Okay. Is this something that can be
20 cured by taking a brief recess?

21 MR. BERRY: I don't know, Judge. I don't know why he
22 believes that. We've had numerous conversations regarding the
23 plea, but if he doesn't think that he understands what he's
24 doing, then we either take a break and see if he does, or scrap
25 it and go see Judge Bailey, I guess.

1 THE DEFENDANT: I understand why we here today is did
2 we have enough time within the last week is when I accepted my
3 plea and he discuss things with me. That's why I have a clear
4 understanding. That's why I asked for the status conference.
5 But moving forward, I understand today what I'm doing.

6 THE COURT: Do you believe, Mr. Acoff, that you've
7 discussed your case enough with Mr. Berry to proceed with
8 today's plea?

9 THE DEFENDANT: Yes.

10 THE COURT: Would you like any more time to discuss
11 things with him?

12 THE DEFENDANT: I would give the same answer, so
13 nothing's going to change. I believe moving forward, this is
14 my last option until trial is forced on me.

15 THE COURT: You wish to move forward at this time?

16 THE DEFENDANT: Yes.

17 THE COURT: Mr. Acoff, has Mr. Berry been able to
18 answer your questions about how best to proceed in this case?

19 THE DEFENDANT: Yes.

20 THE COURT: Is there anything that he has not done
21 which you've asked him to do?

22 THE DEFENDANT: Certain things I wanted to explain to
23 me and I want got a full understanding, a clear idea.

24 MR. BERRY: Judge, if I might, Mr. Acoff is looking
25 at a plea agreement, and this is not going to be a plea

1 agreement plea. It's a plea straight up to the indictment.
2 And he and I have talked about that on numerous occasions, and
3 Mr. Acoff is of the -- or was at least of the mind that he did
4 not want to have to debrief, and the United States was
5 unwilling to take that provision out of the plea agreement, so
6 the only option for him to plead is to plead straight up to the
7 indictment.

8 But in addition to that, I have talked to Shawn
9 Adkins, and Shawn has agreed that even though he's pleading
10 straight up to the indictment, that the drugs involving one of
11 the counts is still going to be up for discussion at
12 sentencing. And as a result of that, he will not -- because he
13 is going to argue that, he's still not going to lose his
14 acceptance of responsibility. So it's actually a better deal
15 for him than having to plead to a plea agreement, because he
16 doesn't have to debrief and he doesn't want to do that.

17 So I don't know, Judge. Honestly, I don't know what
18 more explanation that I can give him. If I could, I would,
19 but --

20 THE DEFENDANT: My issue wasn't with the debriefing.
21 My issue, I was believed to think that I that had a zero to 20.
22 I'm at a one to 40. I supposed to get three years supervised
23 release. It's six years supervised release and it's --

24 (Discussion held off the record.)

25 MR. BERRY: There's a difference between the one to

1 20 and the two to 40 he's talking about, or the one to 40 he's
2 talking about, Judge, is because of protected location. And
3 there's nothing that -- there's nothing I can do about that.
4 They're not going to take it out. So -- but he can argue about
5 having the drugs on the island and in a protected location
6 there. So just doesn't get any better than this. I mean -- if
7 it's me or if it's whoever, I mean, this is as good a deal as
8 he's going to get.

9 THE COURT: Do you wish to proceed, Mr. Acoff?

10 THE DEFENDANT: I'm just worried that my guideline
11 range is not in my plea agreement, this plea agreement they
12 presented. That's what I'm pleading out to my indictment. I
13 feel like the 841(b)(1)(C) is a zero to 20, and I wondered how
14 he was saying I can get two more points and get my supervised
15 release doubled and my mandatory minimum plus my back number
16 flipped and my fine doubled, like, just explain that to me is
17 what I was asking him, and he got no answers for me. But he
18 telling me it's the best plea I should -- I should take this
19 plea agreement. I felt like if I plead to my indictment, it's
20 the protected location and delivery, which is what I did, but
21 stipulating the other things as relevant conduct, I don't
22 understand how that's coming into play.

23 THE COURT: I think at this point it would probably
24 be prudent to terminate the hearing. If Mr. Acoff wishes to
25 discuss this further with you, Mr. Berry, I'm here. We can

1 reconvene. But I'm uncomfortable having an open discussion in
2 court involving the terms of a plea agreement or versus no plea
3 agreement. It doesn't sound to the Court as if he is
4 completely understanding what you've articulated for him and
5 the Court here today.

6 MR. BERRY: Quite honestly, Judge, I'm not sure that
7 it's a matter of understanding, but it's not what he wants. He
8 doesn't want to plead -- he wants to plead to what he wants to
9 plead to, and it doesn't work that way, and he knows it doesn't
10 work that way, so do whatever the Court feel best, obviously,
11 Judge.

12 THE COURT: Okay. Well, let's go off the record. I
13 can reconvene the hearing if you wish to discuss things a
14 little further, but I don't know that we ought to be having
15 these discussions --

16 MR. BERRY: In open court.

17 THE COURT: -- in open court, correct. I'm here. If
18 we need to reconvene it, we can. I'll give you a little bit of
19 time to discuss things with him. If we reconvene, that's fine.
20 If not, like I say, I'll alert the District Court there was no
21 plea today. Okay. Then we'll be adjourned at least for the
22 time being.

23 (Proceedings adjourned at 11:27 a.m.)
24
25

1 CERTIFICATE

2 I, Cindy L. Knecht, Registered Professional Reporter and
3 Official Reporter of the United States District Court for the
4 Northern District of West Virginia, do hereby certify that the
5 foregoing is a true and correct transcript of the proceedings
6 had in the above-styled action on October 18, 2022, as reported
7 by me in stenotypy.

8 I certify that the transcript fees and format comply with
9 those prescribed by the Court and the Judicial Conference of
10 the United States.

11 Given under my hand this 24th day of April 2023.

12 /s/Cindy L. Knecht

13 _____
14 Cindy L. Knecht, RMR/CRR
15 Official reporter, United States
16 District Court for the Northern
17 District of West Virginia
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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF WEST VIRGINIA
3 United States of America,
4 Plaintiff,
5 VS. CRIMINAL ACTION NO.
6 5:22-cr-13
7 Dallas Acoff,
8 Defendant.
9 - - -
10 Proceedings had in the reconvened plea hearing of the
11 above-styled action on October 18, 2022, before Honorable James
12 P. Mazzone, Magistrate Judge, at Wheeling, West Virginia.

13 - - -

14 APPEARANCES:

15 On behalf of the United States of America:

16 Jennifer T. Conklin
17 Assistant United States Attorney
18 United States Attorney's Office
19 P.O. Box 591
20 Wheeling, WV 26003
21 304.234.0100

22 On behalf of the Defendant:

23 Charles T. Berry
24 PO Box 114
25 Kingmont, WV 26578
304.363.3564

26 The defendant was present in person.

27 Proceedings recorded utilizing tape.
28 Transcript produced by computer-aided transcription.

Cindy L. Knecht, RMR/CRR/CBC/CCP
PO Box 326 Wheeling, WV 26003 304.234.3968

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Tuesday Afternoon Session,
October 18, 2022, 12:30 p.m.

- - -

THE CLERK: This is the case of the United States of
America versus Dallas Michael Acoff, Criminal Action Number
5:22-CR-13.

Will counsel please note their appearance for the
record.

MS. CONKLIN: Jennifer Conklin standing in for Shawn
Adkins.

MR. BERRY: Charles Berry for Mr. Acoff, Judge.

THE COURT: Thank you, and good afternoon. We are
reconvening following this morning's proceedings whereby the
Court adjourned to allow Mr. Acoff and counsel further time to
discuss his intent to plead.

Has that occurred?

MR. BERRY: It has occurred, Judge. My understanding
is he does want to plead to the indictment.

THE COURT: Okay. And again, just to recap, he
desires to plead guilty to the charges contained in Counts 1,
2, 3, 4, and 5, including the original forfeiture allegation,
all within the original indictment; is that correct?

MR. BERRY: That's my understanding, Judge.

THE COURT: And again, to confirm for the record,

1 there is no applicable plea agreement in this case; is that
2 correct?

3 MR. BERRY: There's no plea agreement, Judge, but
4 there was a side agreement that I mentioned in our first
5 session with the government as far as the drugs over on the
6 island, so that's an agreement. It's an agreement between
7 Mr. Acoff, me, and the government. And she's very well aware
8 of that. We talked about that just a bit ago.

9 THE COURT: Is that correct, Ms. Conklin?

10 MS. CONKLIN: That's correct, Your Honor.

11 THE COURT: Okay. Thank you.

12 Mr. Acoff, sir, would you please stand and raise your
13 right hand so that you may be sworn in.

14 (Defendant sworn.)

15 THE COURT: Mr. Acoff, sir, do you understand that
16 you are now under oath, and that if you were to answer any of
17 these questions falsely, your answers may later be used against
18 you in another prosecution for perjury or for making a false
19 statement?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And do you understand that if you were to
22 lie, it could result in a higher sentence for you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: During the course of this hearing,
25 Mr. Acoff, I will be asking you several questions. At any

1 point you should feel free to ask questions, ask for an
2 explanation if you do not understand any of my questions, or
3 ask for me to pause the proceedings so that you may confer with
4 Mr. Berry prior to answering any of the questions.

5 Do you understand that, sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Would you please state your full name.

8 THE DEFENDANT: Dallas Michael Acoff.

9 THE COURT: How old are you?

10 THE DEFENDANT: 33.

11 THE COURT: How far have you gone in school?

12 THE DEFENDANT: I have my GED.

13 THE COURT: Can you read, write, and understand the
14 English language?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you recently been under the care of
17 a doctor, a psychiatrist, or any other medical professional for
18 any serious physical or mental illness, including addiction
19 to --

20 THE DEFENDANT: Yes.

21 THE COURT: -- to drugs or alcohol?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, with respect to any of those
24 conditions, Mr. Acoff, do they, or any medication you've been
25 prescribed, in any way affect your ability to hear, to

1 communicate, or to comprehend?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you currently using any form of
4 controlled substance or any medication or alcohol that may
5 affect your ability to understand this proceeding?

6 THE DEFENDANT: No, sir.

7 THE COURT: Mr. Berry, do you have any reason to
8 question the competence of Mr. Acoff?

9 MR. BERRY: I do not, Judge.

10 THE COURT: Mr. Acoff, are you here today to enter a
11 guilty plea?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Acoff, the Court would make a finding
14 that you are competent and capable of entering an informed
15 plea.

16 Mr. Acoff, I'm a United States Magistrate Judge. You
17 are charged in this case with a felony. That means that you do
18 have the right to have this plea taken by an Article III Judge,
19 sometimes called a District Judge. Only you can give up that
20 right, and I can only hear your plea if you agree to it by
21 signing a written waiver. In that regard, the record should
22 reflect that Mr. Acoff has already executed such a waiver form.

23 Mr. Acoff, did you indeed review and sign this waiver
24 form?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Did you understand it?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did you have an adequate opportunity to
4 speak with Mr. Berry about it?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did you feel pressured or forced to sign
7 this waiver?

8 THE DEFENDANT: No, sir.

9 THE COURT: Mr. Berry, is it also your understanding
10 that Mr. Acoff agrees to this waiver?

11 MR. BERRY: It is, Judge.

12 THE COURT: Okay. The court will then make a finding
13 that the waiver form has been properly executed. It will be
14 tendered to the clerk for entry.

15 Mr. Acoff, sir, do you understand that you do have a
16 right to be represented by an attorney at every stage of these
17 proceedings, including sentencing, and that if you could not
18 afford an attorney, you would have the right to have one
19 appointed?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Berry, do you or any member of your
22 office represent anyone, including any codefendants, who may be
23 interested in the outcome of this case?

24 MR. BERRY: I do not, Judge.

25 THE COURT: Mr. Acoff, sir, do you believe that

1 you've had an adequate amount of time to discuss your case
2 fully with Mr. Berry?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has Mr. Berry been able to answer your
5 questions about how best to proceed in this case?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Is there anything that he has not done
8 which you've asked him to do?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you completely satisfied with the
11 legal advice that you have received from Mr. Berry?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Berry, during the time that you've
14 represented Mr. Acoff, has he been cooperative with you?

15 MR. BERRY: He has been cooperative, Judge.

16 THE COURT: Have you an adequate amount of time to
17 discover the government's case?

18 MR. BERRY: Yes, sir.

19 THE COURT: Have you an adequate amount of time to
20 consider possible defenses?

21 MR. BERRY: I have, Judge.

22 THE COURT: Do you know of any viable defense to the
23 charges contained in Counts 1, 2, 3, 4, and 5 of the original
24 indictment?

25 MR. BERRY: No viable defenses, Judge.

1 THE COURT: Have you had an adequate amount of time
2 to consider possible sentences?

3 MR. BERRY: We have.

4 THE COURT: Have you discussed all of these issues
5 with Mr. Acoff?

6 MR. BERRY: I have, Judge.

7 THE COURT: Mr. Acoff, it is the Court's
8 understanding that there is no plea agreement in this case.
9 However, you are intending to plead guilty to Counts 1, 2, 3,
10 4, and 5 of the original indictment, as well as the forfeiture
11 allegation; is this correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you received a copy of the original
14 indictment filed against you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you had an opportunity to read that
17 indictment?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you wish for the Court to reread it to
20 you at this time, or are you willing to waive that reading?

21 THE DEFENDANT: I'll waive the reading.

22 THE COURT: Thank you.

23 Mr. Acoff, it is the Court's understanding that you
24 are intending to plead guilty to Count 1 of the original
25 indictment which charges you with distribution of cocaine base

1 within 1,000 feet of a protected location in violation of 21,
2 United States Code, Sections 841 and 860; is that correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: It's further the Court's understanding
5 that you are intending to plead guilty to Count 2 of the
6 original indictment, which charges you with possession with
7 intent to distribute cocaine base in violation of 21, United
8 States Code, Section 841; is that correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: It's further the Court's understanding
11 that you are intending to plead guilty to Count 3 of the
12 original indictment, which charges you with possession with
13 intent to distribute cocaine in violation of 21, United States
14 Code, Section 841; is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And it is further the Court's
17 understanding that you are intending to plead guilty to Count 4
18 of the indictment, which charges you with possession with
19 intent to distribute methamphetamine in violation of 21, United
20 States Code, Section 841; is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And finally, it is the Court's
23 understanding that you are intending to plead guilty to Count 5
24 of the original indictment, which charges you with possession
25 with intent to distribute fentanyl in violation of 21, United

1 States Code, Section 841; is that also correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Acoff, how do you plead to the charge
4 contained in Count 1 of the original indictment?

5 THE DEFENDANT: Guilty.

6 THE COURT: How do you plead to the charge contained
7 in Count 2 of the original indictment?

8 THE DEFENDANT: Guilty.

9 THE COURT: And Mr. Acoff, how do you plead to the
10 charge contained in Count 3 of the original indictment?

11 THE DEFENDANT: Guilty.

12 THE COURT: Mr. Acoff, how do you plead to the charge
13 contained in Count 4 of the original indictment?

14 THE DEFENDANT: Guilty.

15 THE COURT: And finally, Mr. Acoff, how do you plead
16 to the charge contained in Count 5 of the original indictment?

17 THE DEFENDANT: Guilty.

18 THE COURT: Now, Mr. Acoff, before the Court accepts
19 your pleas, I do need to make sure that there is a factual
20 basis for the pleas, that you understand the nature of the
21 charges against you and the consequences of your pleading
22 guilty to those charges, that you also understand the
23 constitutional and other legal rights that you will be giving
24 up by pleading guilty, and that you are pleading guilty
25 voluntarily.

1 With respect to Count 1, Mr. Acoff, you are charged
2 with distribution of cocaine base within 1,000 feet of a
3 protected location in violation of 21, United States Code,
4 sections 841(a)(1), 841(b)(1)(C), and 860.

5 Title 21, United States Code, Section 841(a)(1), as
6 cited within this indictment, provides in pertinent part as
7 follows: It shall be unlawful for any person knowingly or
8 intentionally to distribute or dispense a controlled substance.
9 Cocaine base is a controlled substance within the meaning of
10 the law.

11 Title 21, United States Code, Section 860, as cited
12 within this indictment, provides in pertinent part as follows:
13 Any person who violates Section 841(a)(1) of this title by
14 distributing a controlled substance within 1,000 feet of a
15 protected location is subject to: number one, twice the
16 maximum punishment authorized by Section 841(b) of this title;
17 and number two, at least twice any term of supervised release
18 authorized by Section 841(b) of this title for a first offense.

19 Now, Mr. Acoff, do you understand the criminal
20 statutes under which you've been charged?

21 THE DEFENDANT: Yes.

22 THE COURT: Mr. Acoff, if the government had to go to
23 trial in this case, it would have to prove the following
24 elements of Title 21, United States Code, Section 841(a)(1)
25 against you beyond a reasonable doubt: First, that you

1 distributed cocaine base; second, that you had knowledge of the
2 distribution; and third, that you intended to distribute
3 cocaine base.

4 Now, in order to establish that you violated Title
5 21, United States Code, Section 860, the government would have
6 to prove the following elements against you beyond a reasonable
7 doubt: First, that you knowingly delivered a controlled
8 substance to another person; second, that you knew that cocaine
9 base was a controlled substance; and third, that the delivery
10 took place within 1,000 feet of the protected location.

11 Now, Mr. Acoff, do you understand the elements of the
12 statutes under which you've been charged?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, considering those definitions, do
15 you consider yourself to be guilty of violating 21, United
16 States Code, Sections 841 and 860 with respect to Count 1 of
17 the original indictment?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, Mr. Acoff, you are charged in Count
20 2 of this indictment with possession with intent to distribute
21 cocaine base in violation of 21, United States Code, Sections
22 841(a)(1) and 841(b)(1)(C). Title 21, United States Code,
23 Section 841(a)(1) states in pertinent part as follows: It
24 shall be unlawful for any person knowingly or intentionally to
25 possess with the intent to distribute a controlled substance.

1 Cocaine base is a controlled substance within the meaning of
2 the law.

3 Now, Mr. Acoff, do you understand the criminal
4 statute under which you've been charged?

5 THE DEFENDANT: Yes.

6 THE COURT: Now, Mr. Acoff, if the government had to
7 go to trial in this case, it would have to prove the following
8 elements of Title 21, United States Code, Section 841(a)(1)
9 against you beyond a reasonable doubt: First, that you
10 possessed cocaine base; second, that you had knowledge of the
11 possession; and third, that you intended to distribute cocaine
12 base.

13 Now, Mr. Acoff, do you understand the elements of the
14 statute under which you've been charged?

15 THE DEFENDANT: Yes.

16 THE COURT: Now, considering those definitions, do
17 you consider yourself to be guilty of violating 21, United
18 States Code, Section 841 with respect to Count 2 of the
19 original indictment?

20 THE DEFENDANT: I'm challenging two, three and four
21 and five counts of the indictment.

22 THE COURT: We're talking about Count 2 right now.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Let me -- I'll repeat that last question
25 for you. Okay?

1 Considering the definitions that I just read to you
2 with respect to Count 2, do you consider yourself to be guilty
3 of violating 21, United States Code, Section 841 with respect
4 to Count 2 of the original indictment?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I'm sorry?

7 THE DEFENDANT: Yes.

8 THE COURT: Now, with respect to Count 3 of this
9 indictment, Mr. Acoff, you are charged with possession with
10 intent to distribute cocaine in violation of 21, United States
11 Code, Sections 841(a)(1) and 841(b)(1)(C).

12 Title 21, United States Code, Section 841(a)(1)
13 states in pertinent part as follows: It shall be unlawful for
14 any person knowingly or intentionally to possess with the
15 intent to distribute a controlled substance. Cocaine is a
16 controlled substance within the meaning of the law.

17 Mr. Acoff, do you understand the criminal statute
18 under which you've been charged?

19 THE DEFENDANT: Yes.

20 THE COURT: Now, Mr. Acoff, if the government had to
21 go to trial in this case, it would have to prove the following
22 elements of Title 21, United States Code, Section 841(a)(1)
23 against you beyond a reasonable doubt: First, that you
24 possessed cocaine; second, that you had knowledge of the
25 possession; and third, that you intended to distribute cocaine.

1 Now, Mr. Acoff, do you understand the elements of the
2 statute under which you've been charged?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, considering those definitions, do
5 you consider yourself to be guilty of violating 21, United
6 States Code, Section 841 with respect to Count 3 of the
7 original indictment?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: With respect to Count 4 of this
10 indictment, Mr. Acoff, you are charged with possession with
11 intent to distribute methamphetamine in violation of 21, United
12 States Code, Sections 841(a)(1) and 841(b)(1)(C). Title 21,
13 United States Code, Section 841(a)(1) states in pertinent part
14 as follows: It shall be unlawful for any person knowingly or
15 intentionally to possess with the intent to distribute a
16 controlled substance. Methamphetamine is a controlled
17 substance within the meaning of the law.

18 Mr. Acoff, do you understand the criminal statute
19 under which you've been charged?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, Mr. Acoff, if the government had to
22 go to trial in this case, it would have to prove the following
23 elements of Title 21, United States Code, Section 841(a)(1)
24 against you beyond a reasonable doubt: First, that you
25 possessed methamphetamine; second, that you had knowledge of

1 the possession; and third, that you intended to distribute
2 methamphetamine.

3 Mr. Acoff, do you understand the elements of the
4 statute under which you've been charged?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, considering those definitions, do
7 you consider yourself to be guilty of violating 21, United
8 States Code, Section 841 with respect to Count 4 of the
9 original indictment?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Acoff, with respect to Count 5 of
12 this indictment, you've been charged with possession with
13 intent to distribute fentanyl in violation of 21, United States
14 Code, Sections 841(a)(1) and 841(b)(1)(C).

15 Title 21, United States Code, Section 841(a)(1)
16 states in pertinent part as follows: It shall be unlawful for
17 any person knowingly or intentionally to possess with the
18 intent to distribute a controlled substance. Fentanyl is a
19 controlled substance within the meaning of the law.

20 Mr. Acoff, sir, do you understand the criminal
21 statute under which you've been charged?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, Mr. Acoff, if the government had to
24 go to trial in this case, it would have to prove the following
25 elements of Title 21, United States Code, Section 841(a)(1)

1 against you beyond a reasonable doubt: First, that you
2 possessed fentanyl; second, that you had knowledge of the
3 possession; and third, that you intended to distribute
4 fentanyl.

5 Mr. Acoff, do you understand the elements of the
6 statute under which you've been charged?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, Mr. Acoff, considering those
9 definitions, do you consider yourself to be guilty of violating
10 21, United States Code, Section 841 with respect to Count 5 of
11 the original indictment?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Ms. Conklin, would you please present the
14 government's witness or proffer as to what it would have been
15 able to prove in this case.

16 MS. CONKLIN: Your Honor, the government is going to
17 be proceeding by proffer, if that's okay with the Court.

18 THE COURT: Okay. Is there any objection?

19 MR. BERRY: I have none, Judge.

20 THE COURT: Thank you. You may proceed.

21 MS. CONKLIN: Should this case have gone to trial,
22 the government would have presented evidence that on August
23 5th, 2021, the Ohio Valley Drug Task Force was coordinating a
24 controlled purchase of crack cocaine. A confidential informant
25 was provided Ohio Valley Drug Task Force funds and was provided

1 audio and video recording equipment. The CI's vehicle was
2 searched. Nothing was located. And the CI then went to meet
3 an individual named Blake at Pickle's on Fulton Street, and
4 Blake entered the CI's vehicle and continued to drive to the
5 Rose Hill Towers in Bellaire, Ohio. There the defendant walked
6 from the Rose Hill Towers to the vehicle with a black backpack
7 which he placed in the trunk. They made a stop at Burger King
8 in Bellaire, and then continued to Blake's apartment in
9 Wheeling, West Virginia, and I believe that is on Fulton
10 Street; specifically, 514 Fulton Street, Apartment D.

11 There at the apartment, the CI purchased a quarter of
12 an ounce of crack cocaine off of the defendant. The CI then
13 continued to run another errand for the defendant, and after
14 running that errand, did report back to task force officers.
15 The crack cocaine that was provided -- that was purchased from
16 the defendant by the CI was provided to the officers. That
17 package weighed 7.58 grams and the substance tested positive
18 for cocaine base.

19 The CI reported that the defendant, Mr. Acoff, had
20 weighed the crack cocaine on a scale at the time of selling it,
21 at that time it weighed 7.2 grams without the bag, and that
22 Mr. Acoff had actually broken off that 7.2-gram piece from what
23 appeared to be an ounce of crack cocaine sort of brick.

24 That purchase occurred in Ohio County, in the
25 Northern District of West Virginia, and the apartment was

1 within 1,000 feet of Fulton playground.

2 The government would additionally present evidence
3 that on February 22nd, 2022, in Ohio County, in the Northern
4 District of West Virginia, on February 2nd -- I'm sorry,
5 Wheeling police officers observed a vehicle traveling without
6 headlights. When an officer tried to -- attempted to make a
7 traffic stop and activated his emergency lights and sirens, the
8 vehicle fled, accelerating through a parking lot, where it
9 nearly struck a pole and becoming airborne briefly. The
10 vehicle continued to drive dangerously, including proceeding in
11 the lane of oncoming traffic, driving at excessive speeds, and
12 disregarding stop signs.

13 Officers pursued the vehicle, which eventually
14 stopped, and officers observed an individual exit the vehicle
15 and run east wearing a white jacket, dark sweatpants, and a
16 dark hat. Officers were able to track the individual through
17 previously undisturbed snow on the ground and observed a man
18 hiding in a fenced back yard with an open gate. When officers
19 detained that individual, who was later identified as
20 Mr. Acoff, he had \$100 in his hands and was no longer wearing
21 the white jacket or black hat.

22 Officers searched the location of the pursuit and
23 found a wallet containing Mr. Acoff's Ohio license and a large
24 plastic bag with contraband inside. Additionally, the white
25 jacket and black hat that Mr. Acoff had initially been wearing

1 when he exited the vehicle were found on the scene.

2 Mr. Acoff was brought to the Wheeling police station
3 for booking, and officers inquired if he had anything else on
4 him. Mr. Acoff reached into his pants, towards the back of his
5 pants, and removed a plastic bag containing a white substance.
6 That white substance field-tested positive for fentanyl and
7 weighed approximately 2.7 grams.

8 The other bag that was obtained or retrieved by the
9 police in the pursuit of Mr. Acoff was processed at the
10 Wheeling Police Department. Officers located three bags
11 containing 17.5 grams of crack cocaine that was field-tested
12 positive for cocaine. They located one bag containing 7.7
13 grams of cocaine, and that bag also field-tested positive.
14 They located an additional bag containing 7.1 grams of cocaine,
15 and that bag of cocaine field-tested positive. They located
16 one bag containing 6.0 grams of methamphetamine, and again that
17 field-tested positive.

18 And additionally, officers located 50 green pills
19 with K8 on them, which they were able to identify as oxycodone
20 pills -- 15-milligram oxycodone pills. This occurred also in
21 Ohio County, in the Northern District of West Virginia.

22 THE COURT: Okay. Mr. Berry, do you have any
23 objections to the government's proffer?

24 MR. BERRY: No objections, Judge, but I would just
25 mention, again, that the agreement that I have -- that

1 Mr. Acoff has with the government regarding the drug weight.
2 As far as the factual part of it, I don't think that we have
3 any objection to that, do you?

4 THE COURT: Mr. Acoff, sir, do you have any objection
5 to the government's proffer?

6 THE DEFENDANT: Nothing besides the drugs in itself.

7 THE COURT: The weights?

8 MR. BERRY: Yeah, the drug weight.

9 THE COURT: Mr. Acoff, was the government's evidence
10 which was just presented by way of proffer substantially
11 correct?

12 THE DEFENDANT: No. Except for the drug weight.

13 THE COURT: And did the government's proffer
14 accurately reflect your involvement in what occurred?

15 THE DEFENDANT: Except the drug weight.

16 THE COURT: Okay. Mr. Acoff, sir, I'd like for you
17 now to explain to me what it is that you did that you feel
18 makes you guilty of distribution of cocaine base within 1,000
19 feet of a protected location in violation of 21, United States
20 Code, Sections 841 and 860 as charged within Count 1 of the
21 original indictment.

22 THE DEFENDANT: That day I went on foot and I, in
23 fact, sold crack cocaine.

24 THE COURT: And again, did it occur as the government
25 just described within its proffer?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did these acts occur on or about August
3 the 5th, 2021, at or near Ohio County, located within the
4 Northern District of West Virginia?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Acoff, I'd like for you now to
7 explain to me what it is that you did that you feel makes you
8 guilty of possession with intent to distribute cocaine base in
9 violation of 21, United States Code, Section 841 as charged
10 within Count 2 of the original indictment.

11 MR. BERRY: May I have a moment, Judge?

12 THE DEFENDANT: I fled the scene. It was a traffic
13 stop. I didn't stop. I fled. And I ran. Didn't have a
14 license. I was in Wheeling. I knew I wasn't supposed to be.
15 Allegedly the police officer found some drugs and he said it
16 was mine.

17 THE COURT: And again, did these acts occur as
18 described by the government within its proffer?

19 THE DEFENDANT: Everything but the drug weight.

20 THE COURT: And did these acts occur on or about
21 February the 2nd, 2022, at or near Ohio County, within the
22 Northern District of West Virginia?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Acoff, I'd like for you now to
25 explain to me what it is that you did that you feel makes you

1 guilty of possession with intent to distribute cocaine in
2 violation of 21, United States Code, Section 841 as charged
3 within Count 3 of the original indictment.

4 THE DEFENDANT: Same thing. Just fled from the
5 scene.

6 THE COURT: And again, with respect to Count 3, did
7 these events occur as described by the government within its
8 proffer?

9 THE DEFENDANT: Everything but the drug weight.

10 THE COURT: And did these acts occur on or about
11 February the 2nd, 2022, at or near Ohio County, within the
12 Northern District of West Virginia?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Acoff, I'd like for you now to
15 explain to me what it is that you feel makes you guilty of
16 possession with intent to distribute methamphetamine in
17 violation of 21, United States Code, Section 841 as charged
18 within Count 4 of the original indictment.

19 THE DEFENDANT: Fled the scene.

20 THE COURT: Okay. And did the events surrounding
21 Count 4 occur as described by the government within its
22 proffer?

23 THE DEFENDANT: Everything but the drug weight.

24 THE COURT: Did these acts occur on or about February
25 the 2nd, 2022, at or near Ohio County, within the Northern

1 District of West Virginia?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And finally, Mr. Acoff, please explain to
4 me what it is that you did that you feel makes you guilty of
5 possession with intent to distribute fentanyl, in violation of
6 21, United States Code, Section 841 as charged in Count 5 of
7 the original indictment.

8 THE DEFENDANT: Just fled the scene.

9 THE COURT: And again, with respect to Count 5, was
10 the government's proffer accurate insofar as what occurred?

11 THE DEFENDANT: Everything but the drug weight.

12 THE COURT: Did these acts occur on or about February
13 the 2nd, 2022, at or near Ohio County, within the Northern
14 District of West Virginia?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Mr. Berry, are you satisfied that if this
17 case went to trial, that there would be no meritorious legal
18 defenses to these charges?

19 MR. BERRY: I am, Judge.

20 THE COURT: Are you satisfied that Mr. Acoff's
21 constitutional and other rights have been observed fully?

22 MR. BERRY: I am, Judge.

23 THE COURT: And do you agree with Mr. Acoff's
24 now-stated intention to enter these pleas of guilty?

25 MR. BERRY: I do.

1 THE COURT: Mr. Acoff, the Court would then make a
2 finding that there is a sufficient factual basis for your plea
3 of guilty.

4 Mr. Acoff, do you understand that in this case you
5 are intending to plead guilty to felony offenses, and that if
6 your pleas are ultimately accepted, you will be adjudicated
7 guilty of those felony offenses?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you also understand that any such
10 judgment may deprive you of valuable civil rights, such as your
11 right to vote, your right to hold public office, your right to
12 serve on a jury, and your right to possess a firearm or gun of
13 any kind?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. Acoff, I'd like to review with you
16 now the statutory penalties that you could face.

17 First, Mr. Acoff, do you understand that with respect
18 to Count 1, you are exposing yourself to a maximum penalty of
19 one to 40 years of imprisonment, a fine of up to \$2 million,
20 and a term of six years of supervised release?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you understand that the mandatory
23 minimum sentence under Count 1 includes at least one year of
24 imprisonment?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you further understand that the
2 mandatory minimum sentence under Count 1 includes that if you
3 are sentenced to a term of imprisonment, at least six years of
4 supervised release?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Acoff, do you understand that with
7 respect to Count 2, you are exposing yourself to a maximum
8 penalty of 20 years of imprisonment, a fine of up to \$1
9 million, and a term of three years of supervised release?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And do you understand that the mandatory
12 minimum sentence under Count 2 includes that if you are
13 sentenced to a term of imprisonment, at least three years of
14 supervised release?

15 THE DEFENDANT: Yes, sir.

16 MR. BERRY: Can we have just a second, Judge?

17 (Discussion off the record.)

18 THE COURT: Let me get back to Count 2. Do you
19 understand, Mr. Acoff, that the mandatory minimum sentence
20 under Count 2 includes that if you are sentenced to a term of
21 imprisonment, at least three years of supervised release?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Acoff, do you also understand that
24 with respect to Count 3, you are exposing yourself to a maximum
25 penalty of up to 20 years of imprisonment, a fine of up to \$1

1 million, and a term of three years of supervised release?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And do you understand that the mandatory
4 minimum sentence under Count 3 includes that if you are
5 sentenced to a term of imprisonment, at least three years of
6 supervised release?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Acoff, do you understand that with
9 respect to Count 4, you are exposing yourself to a maximum
10 penalty of up to 20 years of imprisonment, a fine of up to \$1
11 million, and a term of three years of supervised release?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And do you understand that the mandatory
14 minimum sentence under Count 4 includes that if you are
15 sentenced to a term of imprisonment, at least three years of
16 supervised release?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And finally, Mr. Acoff, with respect to
19 Count 5, do you understand that you are exposing yourself to a
20 maximum penalty of up to 20 years of imprisonment, a fine of up
21 to \$1 million, and a term of three years of supervised release?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And do you understand that the mandatory
24 minimum sentence under Count 5 is that if you are sentenced to
25 a term of imprisonment, at least three years of supervised

1 release?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Counsel, are either of you aware at this
4 time of any other mandatory minimum sentences which may be
5 applicable?

6 MS. CONKLIN: No, Your Honor.

7 MR. BERRY: No, Your Honor.

8 THE COURT: And other than those which we may have
9 already discussed, are either of you aware at this time of
10 specific offense characteristics, cross-references, or
11 adjustments that may be applicable?

12 MS. CONKLIN: Not at this time, Your Honor.

13 MR. BERRY: No cross-references, Judge, and there may
14 be some offense characteristics, but we haven't delved into
15 that yet.

16 THE COURT: Mr. Acoff, do you understand, sir, that
17 supervised release means that after imprisonment, you will be
18 supervised by the probation office under conditions that will
19 be set by the Court?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And do you understand that if you were to
22 violate the terms of supervised release, the Court could revoke
23 that term and order you to serve a term in prison?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you also understand that you will be

1 required to pay a special assessment of \$500 for having been
2 convicted of five felony offenses?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And do you understand that as part of any
5 fine imposed, you could be required to pay the cost of
6 incarceration and/or the cost of supervision on release?

7 THE DEFENDANT: Yes, sir.

8 MR. BERRY: A second, Judge, please.

9 (Discussion off the record.)

10 MR. BERRY: I think we're ready, Judge.

11 THE COURT: Mr. Acoff, do you also understand that
12 the Court in this case does have the authority to order
13 restitution?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And if applicable, do you understand that
16 the government may seek forfeiture in your case?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you also understand and affirm that
19 you are pleading guilty to the forfeiture allegation contained
20 within the indictment?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you understand, Mr. Acoff, that by
23 pleading guilty, if you are not a citizen of the United States,
24 you may be removed from the country, denied citizenship, and
25 denied admission to the United States in the future?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Acoff, do you also understand that
3 the United States Sentencing Guidelines will play a very
4 important role in determining an ultimate sentence in your
5 case?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you and Mr. Berry had an opportunity
8 to discuss the application of these guidelines to your case?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand that the Court will not
11 be able to determine the applicable advisory guideline sentence
12 for your case until after the presentence investigation report
13 has been completed and both you and the government have had an
14 opportunity to review it and to challenge the facts determined
15 by the probation officer, as well as the application of the
16 guidelines recommended by the probation officer?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And do you understand that any sentence
19 ultimately imposed by the Court may be different from any
20 estimate that Mr. Berry may have given you or what you thought
21 it would be?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you also understand that the Court
24 must calculate the applicable sentencing guidelines and
25 consider that range, and the Court must also consider possible

1 departures under the guidelines as well as other sentencing
2 factors contained in 18, United States Code, Section 3553(a)?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand, Mr. Acoff, that the
5 Court is not bound by the advisory guideline range and does
6 have the authority to impose a sentence that is more severe or
7 less severe than the sentence called for by the guidelines?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you understand that parole has
10 been abolished, and that you will not be released on parole if
11 you are sentenced to prison?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you also understand that even if you
14 do not like the sentence imposed upon you by the Court, you
15 will still be bound by your plea and will have no right to
16 withdraw it?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that you do have a
19 right to testify at your sentencing hearing if you desire?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Acoff, everyone found guilty of a
22 crime in federal court within this district has a right to
23 appeal their conviction and sentence to the United States
24 Fourth Circuit Court of Appeals located in Richmond, Virginia.
25 There a three-judge panel would review the conviction and

1 sentence in order to determine if they are correct.

2 Do you understand that, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And do you also understand that you may
5 have a right to appeal your conviction if you believe that the
6 guilty plea was unlawful or involuntary, or that there was some
7 other fundamental defect in the proceedings?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: However, do you agree that your guilty
10 pleas today are lawful and voluntary and that there has been no
11 fundamental defect in the proceedings that you are aware of?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you also understand, Mr. Acoff, that
14 everyone has the right to challenge their conviction or
15 sentence or the manner in which it was determined in a
16 postconviction proceeding, sometimes called a habeas corpus
17 petition or a collateral attack, under Title 28, United States
18 Code, Section 2255?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that your legal
21 remedies on appeal or collateral attack include claims of
22 ineffective assistance of counsel or prosecutorial misconduct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: However, do you agree, Mr. Acoff, that
25 there is currently no known evidence of ineffective assistance

1 of counsel or prosecutorial misconduct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you also understand, Mr. Acoff, that
4 you or the government may have a right to appeal any sentence
5 that the Court imposes?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Acoff, do you also understand that
8 with few exceptions, any notice of appeal must be filed within
9 14 days of judgment being entered in your case?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Acoff, the Court would then make a
12 finding that you do understand the nature of these charges and
13 the consequences of a guilty plea.

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Acoff, do you understand, sir, that
16 you do have the right to continue to plead not guilty to these
17 charges?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that by pleading
20 guilty, you are giving up your right to a speedy and public
21 trial by a jury?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you also understand that by pleading
24 guilty, you are giving up your right to force the government to
25 come forward with witnesses and evidence against you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that you would have
3 been presumed innocent until the government presented enough
4 evidence to satisfy both the Court and a jury beyond a
5 reasonable doubt of your guilt?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand, Mr. Acoff, that when
8 you admit your guilt, you are relieving the government of the
9 burden of proving your guilt?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that you would have had
12 the right to assistance of counsel at trial?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that both you and
15 Mr. Berry would have had the right to confront and the
16 cross-examine your accusers and to test the truth of what they
17 said?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that by pleading
20 guilty, you are giving up these rights?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you also understand that had you
23 desired to go to trial and wished to call witnesses, that you
24 would have been entitled to the services of the U.S. Marshal to
25 bring witnesses to court under subpoena?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that by pleading
3 guilty, you are giving up the right to call witnesses except at
4 your sentencing hearing?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that you would have had
7 the right to file motions to suppress or, in other words, to
8 keep away from the jury's hearing and consideration any
9 evidence of any nature that has been illegally or unlawfully
10 obtained?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that had you desired to
13 go to trial, that you would have had the right to testify at
14 the trial?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you also understand that you could not
17 have been compelled or forced to testify against your will?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that you would have had
20 the right to go to trial and remain silent, that is, to not
21 take the witness stand or not to call any witnesses or not to
22 present any evidence whatsoever on your own behalf?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that the Court would
25 have instructed the jury that they could not convict you

1 because of the exercise of your constitutional right to remain
2 silent, but only based on an offer of proof from the
3 government?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that you are giving up
6 your right to a unanimous verdict from a jury?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Berry, do you believe that Mr. Acoff
9 fully understands the consequences of his guilty plea?

10 MR. BERRY: I do, Your Honor.

11 THE COURT: Mr. Acoff, the Court would then make a
12 finding that you do understand the constitutional and other
13 legal rights that you will be giving up by pleading guilty.

14 Mr. Acoff, knowing all of these things that we have
15 been discussing today, do you still wish to plead guilty at
16 this time?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Has anyone forced you, threatened you,
19 coerced you, intimidated you, or talked you into entering a
20 guilty plea against your will?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you acting voluntarily and of your
23 own free will in entering these guilty pleas?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you pleading guilty because you are

1 guilty of the crimes charged in Counts 1, 2, 3, 4, and 5 of the
2 original indictment?

3 THE DEFENDANT: Everything but the drug weight.

4 THE COURT: So the answer is yes, except for drug
5 weights?

6 THE DEFENDANT: Yes.

7 THE COURT: Mr. Acoff, has anyone promised you or
8 told you something that is different from what I have told you
9 today in order to get you to plead guilty?

10 THE DEFENDANT: No, sir.

11 THE COURT: Are you pleading guilty to protect
12 anyone?

13 THE DEFENDANT: No, sir.

14 THE COURT: Has anyone promised or predicted the
15 exact sentence which will be imposed upon you in this case?

16 THE DEFENDANT: No, sir.

17 THE COURT: Do you understand, Mr. Acoff, that at
18 this time, no one could know the exact sentence which will be
19 imposed in this case?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Acoff, have you been able to fully
22 understand what is going on in these proceedings today?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Acoff, then the Court will make a
25 finding that your guilty pleas are voluntary.

1 Mr. Acoff, at this time, sir, do you have any
2 questions or any second thoughts about entering these pleas of
3 guilty?

4 THE DEFENDANT: No, sir.

5 THE COURT: Would you please stand.

6 Mr. Acoff, how do you plead to Count 1 of the
7 original indictment charging you with distribution of cocaine
8 base within 1,000 feet of a protected location?

9 THE DEFENDANT: Guilty.

10 THE COURT: The record should reflect that
11 Mr. Acoff's pled guilty to Count 1 of the indictment.

12 Mr. Acoff, how do you plead to Count 2 of the
13 original indictment charging you with possession with intent to
14 distribute cocaine base?

15 THE DEFENDANT: Guilty.

16 THE COURT: Record should reflect defendant's pled
17 guilty to Count 2 of the indictment.

18 Mr. Acoff, how do you plead to Count 3 of the
19 original indictment charging you with possession with intent to
20 distribute cocaine?

21 THE DEFENDANT: Guilty.

22 THE COURT: Record should reflect defendant's pled
23 guilty to Count 3 of the indictment.

24 Mr. Acoff, how do you plead to Count 4 of the
25 original indictment charging you with possession with intent to

1 distribute methamphetamine?

2 THE DEFENDANT: Guilty.

3 THE COURT: Record should reflect defendant's pled
4 guilty to Count 4 of the original indictment.

5 And finally, Mr. Acoff, how do you plead to Count 5
6 of the original indictment charging you with possession with
7 intent to distribute fentanyl?

8 THE DEFENDANT: Guilty.

9 THE COURT: Record should reflect that Mr. Acoff's
10 pled guilty to Count 5 of the original indictment.

11 Thank you, sir. You may have a seat.

12 In the case of United States versus Dallas Michael
13 Acoff, the Court would first find that Mr. Acoff is fully
14 competent and capable of entering into an informed plea; that
15 there is a sufficient factual basis for his pleas of guilty;
16 that he understands the nature of the charges and the
17 consequences of a guilty plea to those charges; that Mr. Acoff
18 also understands the constitutional and other legal rights he
19 is giving up because of the pleas; and that Mr. Acoff's pleas
20 were voluntary.

21 While the Court defers adjudicating Mr. Acoff guilty
22 to the sentencing court, I do, however, accept his pleas of
23 guilty to Counts 1, 2, 3, 4, and 5 of the original indictment.

24 Mr. Acoff, the sentencing court in this case must
25 consider the following factors when determining the ultimate

1 sentence that you will receive: Number one, the nature and
2 circumstances of the offense; number two, your history and
3 characteristics; three, the necessity of punishing you,
4 deterring you, protecting the public from you, or providing you
5 with training, medical care, or other treatment; four, the
6 kinds of sentences and the sentencing range established by the
7 sentencing guidelines; five, the need to give defendants with
8 similar criminal records similar sentences; and six, the need
9 to provide restitution to any victims of the offense.

10 Now, in order to help the Court consider these
11 factors, the probation office is required to conduct a
12 presentence investigation of you and submit a report to the
13 sentencing court. The information within this report may have
14 an impact upon any sentence that you ultimately receive.
15 Therefore, you may wish to discuss with Mr. Berry what options
16 are best for you during this process.

17 Do you understand that, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you also understand, Mr. Acoff, that
20 you must not commit any crimes between now and sentencing,
21 because there are additional punishments that may be imposed
22 for committing additional crimes?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Pursuant to Section 6A1 of the sentencing
25 guidelines, the Court orders the probation office to conduct a

1 presentence investigation of Mr. Acoff, prepare a draft
2 presentence investigation report, and disclose its contents to
3 both the government and Mr. Acoff.

4 The Court further directs that the probation officer
5 and all parties comply with Federal Rule of Criminal Procedure
6 32 and Sentencing Guideline Section 6A1.2 regarding deadlines
7 for disclosures, objections, departures, and other sentencing
8 statement requirements.

9 Judge Bailey, being the sentencing court, will
10 schedule this matter for sentencing following receipt and
11 review of the presentence investigation report.

12 And counsel, of course, if you do anticipate a
13 lengthy sentencing hearing, if you could please provide a
14 courtesy call to Judge Bailey's chambers to alert him, that
15 would be very much appreciated.

16 MR. BERRY: Certainly.

17 THE COURT: Counsel, is there anything else we need
18 to take up at this time?

19 MS. CONKLIN: Nothing further from the government.

20 MR. BERRY: No, Your Honor.

21 THE COURT: Thank you very much. Mr. Acoff will be
22 remanded to custody of the United States Marshals.

23 (Proceedings concluded at 1:25 p.m.)
24
25

1 CERTIFICATE

2
3 I, Cindy L. Knecht, Registered Professional Reporter
4 and Official Reporter of the United States District Court for
5 the Northern District of West Virginia, do hereby certify that
6 the foregoing is a true and correct transcript to the best of
7 my ability of the taped proceedings had in the above-styled
8 action on October 18, 2022, as reported by me in stenotypy.

9 I certify that the transcript fees and format comply with
10 those prescribed by the Court and Judicial Conference of the
11 United States.

12 Given under my hand this 24th day of April 2023.

13 /s/Cindy L. Knecht

14 _____
15 Cindy L. Knecht, RMR/CRR
16 Official Reporter, United States
17 District Court for the Northern
18 District of West Virginia
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Cindy L. Knecht, RMR/CRR/CBC/CCP
PO Box 326 Wheeling, WV 26003 304.234.3968

JA65

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF WEST VIRGINIA
3 United States of America,
4 Plaintiff,
5 VS. CRIMINAL ACTION NO.
6 5:22-cr-13
7 Dallas Acoff,
8 Defendant.
9 - - -
10 Proceedings had in the sentencing hearing of the
11 above-styled action on February 16, 2023, before Honorable John
12 Preston Bailey, District Judge, at Wheeling, West Virginia.
13 - - -
14 APPEARANCES:
15 On behalf of the United States of America:
16 Shawn M. Adkins
17 Assistant United States Attorney
18 United States Attorney's Office
19 P.O. Box 591
20 Wheeling, WV 26003
21 304.234.0100
22
23 On behalf of the Defendant:
24 Charles T. Berry
25 PO Box 114
Kingmont, WV 26578
304.363.3564
The defendant was present in person.
Proceedings recorded utilizing realtime translation.
Transcript produced by computer-aided transcription.
Cindy L. Knecht, RMR/CRR/CBC/CCP
PO Box 326 Wheeling, WV 26003 304.234.3968

Thursday Afternoon Session,
February 16, 2023, 1:40 p.m.

- - -

THE CLERK: This is the case of the United States of
America versus Dallas Michael Acoff, Criminal Action Number
5:22-CR-13.

Will the parties please note their appearance for the
record.

MR. ADKINS: Shawn Adkins on behalf of the United
States, Your Honor.

MR. BERRY: Charles Berry for Mr. Acoff, Your Honor.

THE COURT: The Court notes that Mr. Acoff is in the
courtroom. I would ask the clerk to administer an oath to him.

(Defendant sworn.)

THE COURT: Mr. Acoff, I'll remind you that you've
now been placed under oath, and if you make any untruthful
statements or answers during today's hearing, those untruthful
statements or answers could form the basis for a separate
action for perjury or false swearing. That having been said,
you should feel free to ask questions, to ask for an
explanation if you don't understand something, and certainly at
all times to discuss any matter with your lawyer.

Do you understand that, sir?

THE DEFENDANT: Yes, sir.

1 THE COURT: Has defense counsel received the
2 presentence investigation report and reviewed it with the
3 defendant?

4 MR. BERRY: Yes, Your Honor.

5 THE COURT: Mr. Acoff, have you received the
6 presentence report and gone over it with your lawyer?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Has the government received and reviewed
9 the presentence report?

10 MR. ADKINS: Yes, Your Honor.

11 THE COURT: Are there any issues in dispute with
12 regard to the presentence report?

13 MR. ADKINS: I don't believe so, Your Honor.

14 MR. BERRY: There were some objections filed, Judge,
15 but we're withdrawing those.

16 THE COURT: All right. The presentence report is
17 accepted and ordered filed and made a part of the record
18 herein. It will be placed in the record under seal. In the
19 event of an appeal of the sentence imposed herein, counsel on
20 appeal will be permitted access to the sealed report. Counsel
21 on appeal are not, however, permitted access to the
22 recommendations section of the presentence report.

23 On October 18, 2022, this defendant appeared in the
24 United States Magistrate Court for the Northern District of
25 West Virginia sitting in Wheeling. At that time this defendant

1 tendered a plea of guilty to Counts 1 through 5 of the
2 indictment. After consideration, the Court accepted the
3 defendant's plea of guilty to the crimes charged in Counts 1
4 through 5, but deferred adjudging the defendant guilty.

5 Subsequent to the acceptance of the guilty plea, a
6 presentence investigation report was ordered. Having now
7 received and reviewed the presentence investigation report,
8 this Court finds that the charge to which Mr. Acoff is pleading
9 adequately reflects the seriousness of the offense behavior.

10 At this time, Mr. Acoff, this Court now accepts your
11 plea of guilty and you stand convicted of the offenses to which
12 you've agreed to plead guilty under your plea agreement.

13 I will now announce my tentative findings as to the
14 applicable guidelines. The base offense level is 24, plus one
15 additional level for protected location, results in an adjusted
16 offense level of 25, less two levels for acceptance of
17 responsibility.

18 What's the government's position with regard to the
19 third level?

20 MR. ADKINS: Move for the third level, Your Honor.

21 THE COURT: Government's motion for a third level is
22 granted, resulting in a total offense level of 22. The
23 criminal history category is V. With a total offense level
24 two, criminal history category V, the guidelines call for
25 incarceration of 77 to 96 months, no eligibility for probation,

1 six years of supervised release on Count 1 and three years on
2 Counts 2 through 5, a fine of \$15,000 to \$6 million,
3 restitution is not implicated, and the special assessment of
4 \$100 on each of the five counts is mandatory.

5 The Court notes the cost of imprisonment is \$3,688
6 per month, the cost of community confinement is \$2,980 per
7 month, and the cost of supervision is \$372 per month.

8 Are there any legal objections to the tentative
9 guideline findings?

10 MR. ADKINS: No, Your Honor.

11 MR. BERRY: No, Your Honor.

12 THE COURT: All right. The guidelines as announced
13 will be the advisory guidelines applicable to the sentencing in
14 this case, and I will recognize defense counsel for a statement
15 on behalf of the defendant.

16 MR. BERRY: Thank you, Your Honor.

17 Your Honor, I filed a sentencing memorandum.
18 Actually, I filed it and a motion to file it late at the same
19 time. I apologize for that. I've been sick for two or three
20 days, and the first opportunity.

21 I trust that the Court has read the sentencing memo.
22 And, Judge, there's not a whole lot more that I can add to
23 that, other than if you look at Mr. Acoff, it appears that --
24 it not only appears, but he has been in a revolving door. He
25 goes to jail or goes to prison. He gets out, he goes to jail,

1 he goes to prison, and we're back -- we're still in that
2 revolving door.

3 I noted, Judge, that in his PSR that there's two or
4 three references to him having schizophrenia. I want you to
5 know that I tried to get a Ph.D. psychologist to go up and
6 evaluate him at NEOCC. She had actually worked for the BOP
7 before. But because of her practice, it would be a daylong
8 thing for her, and she just couldn't and wouldn't do it.

9 But Judge, I would encourage the Court to strongly
10 recommend to the Bureau of Prisons that Mr. Acoff be sent to a
11 medical facility, at least initially, to where he can be
12 evaluated, and if found to have schizophrenia -- and like I
13 said, he's already been diagnosed with that -- to receive
14 treatment that will get him out of the revolving door that he's
15 in.

16 There's got to be something, Judge. You look at his
17 criminal history, and it started at age 15 and he's now 34.
18 And it's been the same story over and over. I mean, it's my
19 belief that people aren't born criminals, that there has to be
20 some interceding something to cause that to occur. If he's not
21 thinking clearly, if he's delusional as far as his thinking is
22 concerned, that very well could be it.

23 I'm not a doctor, not claiming to be. But I don't
24 think that we have anything to lose, don't think the Court has
25 anything to lose or that society has anything to lose to give

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1 this a shot, to recommend him to go to a medical facility where
2 he can receive the testing and treatment, if, in fact, the
3 testing shows that it's needed and necessary.

4 So other than that, Judge, I would ask for a low end
5 sentence, and again, implore you, Judge, to make that
6 recommendation. Thank you.

7 THE COURT: Thank you.

8 Mr. Acoff, do you wish to make a statement to the
9 Court?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Go ahead.

12 THE DEFENDANT: I would like to apologize to the
13 courts, to my family, and to the community for my actions. I
14 would really like some mental health help and some physical
15 help. I've been shot. I've been losing family members. It's
16 not an excuse. It's just something I've been dealing with. I
17 just lost my dad to mental health, colon cancer, starting to
18 see some of the symptoms he had in myself. I really want to
19 seek help for my mental health and my substance abuse problems.

20 THE COURT: Mr. Adkins.

21 MR. ADKINS: Your Honor, first, I don't have any
22 issues with the Court obviously recommending any kind of
23 treatment within the Bureau of Prisons as set forth by defense
24 counsel.

25 First, to just talk about Mr. Acoff's involvement in

1 this case and then go into his criminal history, Mr. Acoff's
2 involvement in the instant case is twofold. One, we have a
3 controlled purchase which he distributed as set forth in the
4 presentence report. I want to make this correction, Your
5 Honor. Actually got a lab report back. It does not change the
6 calculations or anything, so I don't want to confuse things,
7 but we did get a lab report back, and I don't want to
8 misrepresent what was in Count 1 on page 2 of the presentence
9 report. It says 7.58 grams. My lab report says 6.55 grams of
10 cocaine base. Again, it doesn't change the calculations here,
11 but I wanted the Court to be aware of that.

12 In addition, Your Honor, I wanted -- with respect to
13 Count 1, as I was saying, this is a controlled purchase for
14 \$410 of cocaine base, 6.55 grams. That occurred on August 5th,
15 2021. I'll get to the point of that date in just one moment,
16 but with respect to Counts 2 through 5 of this indictment, this
17 is, as I set forth in the presentence report, in my version,
18 February 2nd, 2022, at 3:19 in the morning, the Wheeling police
19 attempted to stop a vehicle that Mr. Acoff was in. He fled in
20 that vehicle. Then he fled on foot. And that's when we
21 revealed the drugs that were laying in the snow next to his
22 wallet, as we set forth those approximate amounts as -- in the
23 government's version of the offense.

24 In addition, as I stated, the fentanyl that was found
25 was handed over by Acoff once he got back to the police

1 station, and it was somewhere hidden on his person. So this is
2 a controlled purchase which obviously he was unaware of, and
3 then later on we have this incident where he flees from the
4 Wheeling police.

5 With that being said, Your Honor, and as Mr. Berry
6 alluded to, Mr. Acoff has been here before. As a matter of
7 fact, he's been before this Court before, back in -- and I
8 don't typically go there in presentence reports, Your Honor,
9 but I'd be remiss if I didn't. In paragraph 39 of the
10 presentence report, he was charged with, when he was 15,
11 aggravated robbery with a firearm specification. In that, as
12 the presentence report states on page 7, the defendant robbed,
13 while using a sawed-off shotgun, an automobile belonging to a
14 victim. He did do a period of commitment in the Ohio system
15 for that offense, but he was 15 when he committed that offense
16 with a firearm.

17 Fast-forward to when Mr. Acoff was 19 years old.
18 Again, as you see going from page 7 to page 8, he fled on scene
19 on foot from officers in that case. After a vehicle, I
20 believe, was stopped, they were asked to exit, he was advised
21 he was under arrest but refused to stop and later was charged.

22 In his first federal conviction before this Court in
23 paragraph 46 -- and this is where I'll start a little bit of a
24 time line, Judge. On July 22nd, 2021, he was charged in this
25 court with conspiracy to distribute cocaine base. He pled

1 guilty in August of 2011, was sentenced in October of 2011 to
2 41 months, and three years of supervised release. This
3 conspiracy, as set forth on page 10 of the PSR, is, again, a
4 controlled purchases made by a confidential informant. Five,
5 as listed in the presentence report, were completed off of
6 Mr. Acoff.

7 Interesting thing about this case, as I'm sure you're
8 aware, Judge, is while he was on his sentence in this case, he
9 was released to a halfway house to finish out his sentence in
10 that case and he escaped from that halfway house. Those --
11 that's indicated in paragraph 47 of the presentence report,
12 that he was at a halfway house here in Wheeling and he escaped.
13 He pled guilty to that escape charge in April, on April 7th of
14 2014, was given a sentence of an additional three months
15 consecutive to his sentence for the conspiracy charge that I
16 just spoke about, in June of 2014.

17 So then there's -- after that, he finished serving
18 that sentence, and then what do we have next, his supervised
19 release starts in October of 2014. That supervised release was
20 for the conspiracy offense and that escape offense. Less than
21 a year later, we have what's contained in paragraph 48 of the
22 presentence report, where the events that's contained in that,
23 and those events on October 9th, 2015, states that a charge of
24 malicious assault was dismissed. Records indicate that on
25 October 9th, 2015, police officers responded to Jacob Street in

1 regards to a complaint of multiple shots fired. Officers
2 observed the victim, Mr. Coleman, lying on the ground covered
3 in blood. Medical units responded, but he was pronounced dead
4 as a result of a gunshot wound to his chest.

5 I know the Court's aware and sees what's in
6 paragraph -- the paragraph to follow that on page 12. There
7 was a legal -- there were legal issues with respect to that
8 charge, as he was initially found guilty of murder in the
9 second degree. But just -- I know the Court understands the
10 legal issues, and they're well set forth in the presentence
11 report, but after those allegations occurred in 2015, he was
12 sentenced on that wanton endangerment and completed his
13 sentence on November 8th of 2019.

14 After that, he was done with his state sentence and
15 he was back in federal custody again. And when he completed
16 that federal custody in December of 2019, he was -- his federal
17 supervised release was revoked on those escape and conspiracy
18 charges, and then he was again sentenced back, only to be
19 released on May 28th of 2021.

20 That gets me back to what we have in this case, Your
21 Honor. Sixty-nine days later, after he was released from
22 custody, on May 28, 2021, the buy in Count 1 of our indictment
23 occurs, on August 5th, 2021, after he spent all that time in
24 custody. Sixty-nine days following his release we're buying
25 cocaine base off of him.

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1 And then, as the Court knows, just a couple months
2 later, in February of 2022, we have the facts surrounding
3 Counts 2 through 5.

4 I think the guidelines are correctly calculated, but
5 I do have to make this one motion, Your Honor. With respect to
6 new guidance from the Department of Justice, I would ask the
7 Court to consider the cocaine base in this case to the
8 equivalent of cocaine, powder cocaine, and vary the sentence
9 from cocaine base equivalent to the cocaine. I know that would
10 drop him a couple levels. I don't know the Court's opinion on
11 that. This is the first time I'm making the motion with the
12 Court with respect to that, but that's something I have to
13 make.

14 THE COURT: You want me to pretend something's not as
15 it is.

16 MR. ADKINS: You don't have to pretend anything, Your
17 Honor, but if you -- that's just a variance motion with respect
18 to the crack cocaine and the cocaine disparity that the
19 department would like me to make in these types of cases. With
20 respect to that, Your Honor, and your ruling with respect to
21 that variance, I would say that a sentence within the guideline
22 range is more than appropriate. And I think Mr. Acoff has
23 shown from the time he was 15 years old, first having that
24 firearm with a robbery, all the way up to this incident that we
25 see that I described with the wanton endangerment and attempted

1 murder, again, a firearm involved, and now these charges, I
2 don't believe Mr. Acoff can conform to the law. I think he's
3 shown that on many occasions. Given chances before, given
4 supervised release before, given halfway house before, and
5 we're here again. So with respect to that, Your Honor, I'd ask
6 a sentence within the guideline range as the Court finds
7 appropriate, based on my motion.

8 MR. BERRY: Judge, before you pass sentence, could I
9 respond to that for just a moment?

10 THE COURT: Sure.

11 MR. BERRY: There is absolutely no doubt that
12 Mr. Acoff has a long and varied criminal history. Nobody
13 doubted that. I'm not doubting that. But if you think about
14 it, Judge, I mean, something's got to cause that. You don't
15 just get out of jail and go right back to doing what you were
16 doing before. There has to be some delusional thinking
17 involved. There has to be. There's got to be something that
18 would cause this.

19 And it's not like that I'm coming in trying to sing
20 the Kumbaya song for Mr. Acoff, but to treat this, Judge,
21 there's got to be a cause. And I think that that cause at
22 least should be investigated and he should be tested.

23 And as far as the downward variance, it wasn't my
24 part to make that, because the memo didn't address me. It
25 addressed the AUSAs. Don't know what you feel about that. I

1 got a feeling that you're not too keen on it. But it is what
2 it is. But apparently, the Attorney General Garland thinks
3 that that's the way it should be. He's not sitting in this
4 courtroom. He's not sitting in your chair. I realize that,
5 but might want to consider that, Judge. Thank you.

6 THE COURT: I'd ask the defendant please rise.

7 Pursuant to the Sentencing Reform Act of 1984, it's
8 the judgment of this Court that the defendant, Dallas Michael
9 Acoff, is hereby committed to the custody of the Bureau of
10 Prisons to be imprisoned for a term of 240 months as to each
11 count, to be served concurrently. Defendant is to receive
12 credit for time served from February 2nd, 2022, to April 5,
13 2022, and -- when did he go back in?

14 THE PROBATION OFFICER: Your Honor, he was out for a
15 little bit and then he got the parole revocation. That's why
16 the time's like that.

17 THE COURT: And whatever time --

18 THE PROBATION OFFICER: To the present.

19 THE COURT: To the present. All right.

20 The Court makes the following recommendations to the
21 Bureau of Prisons: that the defendant be incarcerated at a
22 facility as close to Cleveland, Ohio, as possible, including
23 where he can receive drug treatment, including the 500-hour
24 Residential Drug Abuse Treatment Program as determined by the
25 Bureau of Prisons; that the defendant be evaluated for and be

1 allowed to participate in mental health treatment while
2 incarcerated as determined by the Bureau of Prisons; and that
3 the defendant be allowed to participate in any educational or
4 vocational opportunities while incarcerated as determined by
5 the Bureau of Prisons.

6 Upon release from imprisonment, the defendant shall
7 be placed on supervised release for a term of six years as to
8 Count 1 and three years as to each -- every other count, to be
9 served concurrently.

10 Mr. Acoff, while on supervised release, you must
11 comply with the following mandatory conditions: You must not
12 commit another federal, state, or local crime. You must not
13 unlawfully possess a controlled substance. You must refrain
14 from any unlawful use of a controlled substance. You must
15 submit to one drug test within 15 days of your release from
16 imprisonment and at least two periodic drug tests thereafter as
17 determined by the probation officer. You must cooperate in the
18 collection of DNA as directed by the probation officer.

19 You must also comply with the standard conditions
20 that have been adopted by this Court in its November 29, 2016
21 standing order, as well as the following special conditions:
22 You must participate in a substance abuse treatment program.
23 The probation officer will supervise your participation in the
24 program. You must submit to substance abuse testing to
25 determine if you've used a prohibited substance. You must not

1 attempt to obstruct or tamper with the testing methods.

2 You must participate in a mental health treatment
3 program and follow the rules and regulations of that program.
4 The probation officer, in consultation with the treatment
5 provider, will supervise your participation in the program.
6 You must take all mental health medications that are prescribed
7 by your treating physician.

8 You must comply with the offender employment program,
9 which may include participation in training, counseling, and/or
10 daily job search as directed by the probation officer. Unless
11 excused for legitimate reasons, if not in compliance with the
12 condition of supervision requiring full-time employment at a
13 lawful occupation, you may be required to perform up to 20
14 hours of community service per week until employed as approved
15 by the probation officer.

16 It's further ordered the defendant shall pay to the
17 United States a special assessment fee in the amount of \$100 on
18 each count, for a total of \$500. The Court finds the defendant
19 does not have the ability to pay a fine and the Court will
20 waive a fine in this case.

21 Is there a forfeiture allegation?

22 MR. ADKINS: No, Your Honor.

23 THE COURT: All right. Thank you. Restitution is
24 not implicated.

25 You may be seated, sir.

1 In reaching my decision as to the proper sentence to
2 be imposed in this case, I've considered all the factors set
3 forth in 18 U.S.C. Section 3553. And in doing so, I am, for the
4 record, denying the government's motion for a downward variance
5 based on the disparity between crack and regular cocaine.

6 Here we have a young man who, over at least the last
7 ten years or so, has been in jail a lot more than he's been
8 out. He has shown an inability to follow the rules and
9 regulations of society. When he has been -- he's never
10 successfully completed a term of supervision, and was on
11 supervision when the instant offense was committed.

12 It is his third felony conviction in this district.
13 He's had aggravated robbery with a sawed-off shotgun, carrying
14 a concealed weapon, and was convicted of murder. That was set
15 aside and for some reason pled to attempted murder, yet the
16 victim's still dead. I believe, based on all this, the
17 criminal history is grossly understated. It's properly
18 calculated, but it's grossly understated. And this community
19 and the communities in Ohio need to be protected from
20 Mr. Acoff.

21 Now, defense has made the argument, well, there must
22 be something mentally wrong. Maybe there is. I'm no more of a
23 doctor than defense counsel is. But I have put in his sentence
24 that he's to be evaluated for mental health and to receive
25 treatment.

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1 I've imposed a term of supervised release to allow
2 the probation office to monitor the defendant when he is
3 released from incarceration.

4 In imposing a fine below the guideline range, this
5 Court makes the following findings under 18 U.S.C. Section
6 3572: One, that the defendant's income, earning capacity, and
7 financial resources are as stated in the presentence
8 investigation report; two, that a fine within the guideline
9 range or in any amount would constitute a burden upon the
10 defendant or persons dependent upon the defendant; three, that
11 there is no identifiable pecuniary loss inflicted on others as
12 a result of the offense; and four, that the evidence shows no
13 illegally obtained gains from the offense which are in the
14 defendant's possession.

15 I would ask the probation office to prepare the
16 judgment and commitment order.

17 Mr. Acoff, you have the right to appeal the judgment
18 of this Court insofar as that judgment may be appealable. Any
19 notice of appeal must be filed with the clerk of this court not
20 more than 14 days from the date of entry of the judgment and
21 commitment order. If you desire counsel on appeal and are
22 unable to retain counsel, the appropriate court will review
23 your financial affidavit to determine whether to appoint
24 counsel. And if you so request, the clerk of this court will
25 prepare and file forthwith a notice of appeal on your behalf.

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1 Is there anything further to be considered with
2 regard to this matter?

3 MR. ADKINS: No. Thank you, Your Honor.

4 MR. BERRY: No, Your Honor.

5 THE COURT: All right. Thank you. The defendant is
6 remanded to the custody of the United States Marshal.

7 (Proceedings concluded at 2:12 p.m.)

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1 CERTIFICATE

2 I, Cindy L. Knecht, Registered Professional Reporter and
3 Official Reporter of the United States District Court for the
4 Northern District of West Virginia, do hereby certify that the
5 foregoing is a true and correct transcript of the proceedings
6 had in the above-styled action on February 16, 2023, as
7 reported by me in stenotypy.

8 I certify that the transcript fees and format comply with
9 those prescribed by the Court and the Judicial Conference of
10 the United States.

11 Given under my hand this 214th day of April 2023.

12 /s/Cindy L. Knecht

13 _____
14 Cindy L. Knecht, RMR/CRR
15 Official reporter, United States
16 District Court for the Northern
17 District of West Virginia
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIAUNITED STATES OF AMERICA
v.
DALLAS MICHAEL ACOFF, a/k/a "DAL"

JUDGMENT IN A CRIMINAL CASE

Case Number: 5:22CR13

USM Number: 07889-087

Charles T. Berry, Esq.

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One, Two, Three, Four and Five☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1), 841(b)(1)(C) and 860	Distribution of Cocaine Base within 1,000 Feet of a Protected Location	08/05/2021	1
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C)	Possession with Intent to Distribute Cocaine Base	02/02/2022	2

☒ See additional count(s) on page 2The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ is/are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

February 16, 2023

Date of Imposition of Judgment

Signature of Judge

Honorable John Preston Bailey, United States District Judge
Name and Title of Judge

Date

2-17-2023

JA86

DEFENDANT: DALLAS MICHAEL ACOFF, a/k/a "DAL"
CASE NUMBER: 5:22CR13

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C)	Possession with Intent to Distribute Cocaine	02/02/22	3
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C)	Possession with Intent to Distribute Methamphetamine	02/02/2022	4
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C)	Possession with Intent to Distribute Fentanyl	02/02/2022	5

DEFENDANT: DALLAS MICHAEL ACOFF, a/k/a "DAL"
CASE NUMBER: 5:22CR13

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 240 months, as to each of counts 1 - 5, to be served concurrently.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
- ☒ That the defendant be incarcerated at an FCI or a facility as close to Cleveland, Ohio as possible;
 - ☒ and at a facility where the defendant can participate in substance abuse treatment, as determined by the Bureau of Prisons;
 - ☒ including the 500-Hour Residential Drug Abuse Treatment Program.
 - ☐ That the defendant be incarcerated at _____ or a facility as close to his/her home in _____ as possible;
 - ☐ and at a facility where the defendant can participate in substance abuse treatment, as determined by the Bureau of Prisons;
 - ☐ including the 500-Hour Residential Drug Abuse Treatment Program.
 - ☒ Jail Credit: From February 2, 2022, to the present.
 - ☒ That the defendant be evaluated for mental health and be allowed to participate in mental health treatment while incarcerated, as determined by the Bureau of Prisons.
 - ☒ That the defendant be allowed to participate in any educational or vocational opportunities while incarcerated, as determined by the Bureau of Prisons.
 - ☒ Pursuant to 42 U.S.C. § 14135A, the defendant shall submit to DNA collection while incarcerated in the Bureau of Prisons, or at the direction of the Probation Officer.
 - ☒ The defendant is remanded to the custody of the United States Marshal.
 - ☐ The defendant shall surrender to the United States Marshal for this district:
 - ☐ at _____ ☐ a.m. ☐ p.m. on _____.
 - ☐ as notified by the United States Marshal.
 - ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - ☐ before 12:00 pm (noon) on _____.
 - ☐ as notified by the United States Marshal.
 - ☐ as notified by the Probation or Pretrial Services Office.
 - ☐ on _____, as directed by the United States Marshals Service.

☐**RETURN**

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

JA88

DEFENDANT: DALLAS MICHAEL ACOFF, a/k/a "DAL"
CASE NUMBER: 5:22CR13

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

6 years as to Count 1 and 3 years as to each of counts 2 - 5, all to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the probation officer.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court in its November 29, 2016, Standing Order, as well as with any other conditions on the attached page (if applicable).

DEFENDANT: DALLAS MICHAEL ACOFF, a/k/a "DAL"
CASE NUMBER: 5:22CR13Judgment—Page 5 of 8**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You shall not commit another federal, state or local crime.
4. You shall not unlawfully possess a controlled substance. You shall refrain from any unlawful use of a controlled substance. You shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the probation officer.
5. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
6. You must answer truthfully the questions asked by your probation officer.
7. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
9. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
10. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
11. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
12. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
13. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
14. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
15. You shall not purchase, possess or consume any organic or synthetic intoxicants, including bath salts, synthetic cannabinoids or other designer stimulants.
16. You shall not frequent places that sell or distribute synthetic cannabinoids or other designer stimulants.
17. Upon reasonable suspicion by the probation officer, you shall submit your person, property, house, residence, vehicle, papers, computers, or other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition.
18. You are prohibited from possessing a potentially vicious or dangerous animal or residing with anyone who possesses a potentially vicious or dangerous animal. The probation officer has sole authority to determine what animals are considered to be potentially vicious or dangerous.
19. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: DALLAS MICHAEL ACOFF, a/k/a "DAL"
CASE NUMBER: 5:22CR13

SPECIAL CONDITIONS OF SUPERVISION

- 1) You must participate in a substance abuse treatment program. The probation officer will supervise your participation in the program.
- 2) You must submit to substance abuse testing to determine if you have used a prohibited substance. You must not attempt to obstruct or tamper with the testing methods.
- 3) You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).
- 4) You must take all mental health medications that are prescribed by your treating physician.
- 5) You must comply with the Offender Employment Program which may include participation in training, counseling, and/or daily job search as directed by the probation officer. Unless excused for legitimate reasons, if not in compliance with the condition of supervision requiring full-time employment at a lawful occupation, you may be required to perform up to 20 hours of community service per week until employed, as approved by the probation officer.

DEFENDANT: DALLAS MICHAEL ACOFF, a/k/a "DAL"
CASE NUMBER: 5:22CR13**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 500.00	\$	\$	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

The victim's recovery is limited to the amount of their loss and the defendant's liability for restitution ceases if and when the victim receives full restitution.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
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TOTALS	\$ _____	\$ _____
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☐ See Statement of Reasons for Victim Information

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DALLAS MICHAEL ACOFF, a/k/a "DAL"
CASE NUMBER: 5:22CR13**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 500.00 due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C ☐ D, ☐ E, ☐ F, or ☐ G below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, ☐ F, or ☐ G below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:
Financial obligations ordered are to be paid while the defendant is incarcerated, and if payment is not completed during incarceration, it is to be completed by the end of the term of supervised release; or
- G ☐ Special instructions regarding the payment of criminal monetary penalties:
The defendant shall immediately begin making restitution and/or fine payments of \$ _____ per month, due on the first of each month. These payments shall be made during incarceration, and if necessary, during supervised release.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to Clerk, U. S. District Court, Northern District of West Virginia, P.O. Box 1518, Elkins, WV 26241.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number
Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING

UNITED STATES OF AMERICA,

v.

Docket No. 5:22 CR 13

DALLAS ACOFF,
Defendant.

NOTICE OF APPEAL

Notice is hereby given that Defendant DALLAS ACOFF appeals to the United States Court of Appeals for the Fourth Circuit from the Judgment in a Criminal Case, which was entered in this action on February 17, 2023.

Dated this 1st day of March, 2023.

Dallas Acoff,
Defendant

/s/ Charles T. Berry [WVSB #7273]
Attorney at Law
Post Office Box 114
Kingmont, West Virginia 26578
(304) 363-3564
(304) 816-3117 FAX
cberylaw@hotmail.com

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the foregoing “Notice of Appeal” was served upon the United States by filing the same with the Clerk utilizing the CM/ECF system which should distribute copies to all counsel of record, including:

Shawn Adkins, AUSA

Dated this 1st day of March, 2023.

/s/ Charles T. Berry